





THE LAW RELATING TO PUBLIC
OFFICERS



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THE LAW RELATING
TO
PUBLIC OFFICERS

HAVING EXECUTIVE AUTHORITY IN
THE UNITED KINGDOM :

AN INQUIRY INTO THE LIMITS OF SUCH AUTHORITY AND THE
REMEDIES FOR BREACH OR EXCESS THEREOF.

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"Where freedom broadens slowly down
From precedent to precedent."

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TO THE MEMORY OF

My Grandfather,

W. P. CHASTER,

And my Father,

J. W. CHASTER,

WHO DEVOTED MUCH OF THEIR LIVES

TO THE CAUSE OF

GOVERNMENT

"OF THE PEOPLE, BY THE PEOPLE, FOR THE PEOPLE."

PREFACE

THIS work was foreshadowed in the digest which was published several years ago under the title of "Executive Officers." It is hoped that it will be found a complete record of the common and statute law on the subject.

Parliament may be said to have entered upon a new era of legislation about the year 1875 when it began the continual creation of new statutory powers; the session in which the Public Health, the Conspiraey and Protection of Property and other important Acts became law. From that time, watchfulness over administration became an increasing necessity, and one is insensibly reminded of the sage remark of Gil Blas, which seems to have greater force now than when it was made—

"No me quejo de la justicia ; ella en si es muy justa : solamente desearia yo que todos sus oficiales fueran hombres de bien y de conciencia."

1, NEW COURT, LINCOLN'S INN,
August, 1909.

PREFACE TO THE FIRST EDITION
OF
THE POWERS OF EXECUTIVE OFFICERS

THE accurate exercise and performance of their powers and duties, respectively, by executive officers, is of the essence of good government.

Partly on account of their system of payment (which is based in some cases at least on results), and of a desire to distinguish themselves, and thus earn promotion, and partly on account of that imperfection which is inherent both in mankind and in all human institutions, there is, perhaps, at times a tendency among these officers, in their zeal for the service of the State, on the one hand, to exceed the authority with which the law has clothed them, and, on the other, to be forgetful of the obligations which are due from them to the public.

It is for those who may be in some measure, more or less, affected by such excess or breach of duty respectively, that the following pages have been collated.

5, NEW COURT, LINCOLN'S INN,
October, 1886.

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THE LAW RELATING TO PUBLIC OFFICERS HAVING EXECUTIVE AUTHORITY

INTRODUCTION

A PUBLIC executive officer is an officer employed by the State or local authority to put into actual execution the laws, or some portion of the laws, of such State or authority as the case may be. Taking this as the definition upon which this work is based, it is a natural consequence that the following officers, all of whom come within the term "executive" in its wide signification, are not included within it. First, military and naval officers, who act under the orders of their commander, and who are employed actively to deal with those foes whom it is to our interest politically to force into submission. Secondly, judicial officers, whose duty it is to interpret the laws, statutory or otherwise, but who are not themselves personally engaged in putting the laws into active operation. Thirdly, those officers whose business it is to perform purely ministerial functions and none other, such as those in the ordinary clerical establishments of our great public departments and the like, and who never, under any circumstances, come into collision, in their official capacities, with any member of the public.

Having thus positively and negatively determined shortly what is meant in this work by the term "executive officer," it may be observed that the powers which are exercised by these men, when considered in the aggregate, are enormous. They in fact carry on between them the whole business of active government, both imperial and local; and when we remember that every single case, either of excess of power or breach of duty towards any member of the public, contains within it as its kernel the all-important questions of the rights and liberties of the

people, it will be seen that it is impossible to over-rate the necessity of closely scrutinising their labours. Mr. Dicey, in his work on the Constitution, in this connection says as follows: "Unintelligent students may infer that the law of the constitution is to be gathered only from notorious judgments which embalm the results of grand constitutional or political conflicts. This is not so. Scores of unnoticed cases . . . touch upon or decide principles of constitutional law. Indeed every action against a constable or collector of revenue enforces the greatest of all such principles, namely, that obedience to administrative orders is no defence to an action or prosecution for acts done in excess of legal authority."

It is impossible, having regard to the fallibility of human nature and the system of administration, to suppose that these officers are invariably in the right, or even to credit them on all possible occasions with purity of motive. Over-zeal for the public service and individual interest will, in spite of all precautions, from time to time exhibit themselves. It is against such exhibitions that this work is mainly directed. Hitherto there would appear to have been no direct exterior check upon these powers, and the natural tendency therefore is—no matter how carefully any system may be administered—not only to exalt them as between the officers and the public, but possibly also for them by undue exercise to become a source of danger to the community.

It is for these reasons that this work has been prepared. Its object is to furnish a treatise from which may be ascertained what these officers have the power to do, and what not to do, as against any member of the public, and what remedies are pursuable in case they have either exceeded their power or fallen short of their duty to the individual. It is hoped, therefore, that it may prove to be of interest and value.

The liberties of the people have been purchased with the blood and treasure of our ancestors, and have been maintained by the labours of thousands of good men who have preceded us. To preserve those liberties intact is both the right and duty of us all. That this work may, in some humble degree, minister to that end, is the prayer of the author.

PART I

THE KING A PARTY

1. WARRANTS AND ORDERS

A WARRANT may be defined as a written authority under the hand and seal (a) of some Court, or judicial or other officer authorised by law to issue the same, commanding the person or persons to whom it is addressed to arrest or detain, or produce or release, the body, or to search the premises, or seize or levy, or suspend execution on the goods or lands of some person named therein. (b)

In every instance save those of warrants of superior Courts at common law, (c) viz., the Parliament, the High Court, and those of Assize and Arches, (d) the cause of issue must appear on the face thereof; and where the process is in contempt, the period of detention be specified. (e)

Warrants may therefore not improperly be regarded as of two kinds, namely (1) those issued by superior Courts according to the course of the common law, and (2) those of inferior Courts at common law and of any Court or officer under statutory jurisdiction. (f)

The distinction between them, although rather a nice one, is important from the point of view of the liability of the officer entrusted with the execution. The principle may be thus expressed: Whereas, under a warrant of the first kind, the

(a) Those of superior Courts are sometimes not sealed.

(b) Any warrant which purports to relate to an unknown person or to an offence not yet committed, is void: *Leach v. Money*, 19 St. Tr. 1001; *Entick v. Carrington*, ib. 1030; *Wilkes v. Wood*, ib. 1153. The only exceptions are search warrants, which are generally directed against premises and not against persons; and see *Hutchings v. Reeves*, post, p. 247, and 4 Ed. VII., c. 15, s. 10. In Scotland

general warrants are void except in revenue cases or poinding of the ground: *Webster*, 2 Irv. 596.

(c) *Burdett v. Abbott*, 14 East 1; *Ex p. Fernandez*, 10 C. B. N. S. 3; *The Sheriff of Middlesex*, 11 Ad. & E. 273.

(d) See the judgment of Brett, L.J., *Dale's Case*, 6 Q. B. D. 455.

(e) 2 Inst. 52. Cf. *Re Aikin*, 8 L. R. 1r. 50.

(f) See the judgment of Parke, B., *Gossett v. Howard*, 10 Q. B. 452 et seq.

presumption is that the Court from which it issues had jurisdiction to order the particular thing or things to be done, no matter what the order may be, so as to throw the *onus* of proving no jurisdiction generally on the party attacking it; in the case of a warrant of the second kind, the presumption only extends to the matter actually appearing on its face. But, in either case, if on investigation it be found that there was no jurisdiction, being beyond the scope of the powers delegated to the Court or officer issuing it, the warrant is bad, and no justification to the officer who executes it. "The rule for jurisdiction is that nothing shall be intended to be out of the jurisdiction of a superior Court but that which specially appears to be so, . . . nothing shall be intended to be within the jurisdiction of an inferior Court but that which is expressly alleged." (g)

Orders of two kinds. Like warrants.

Unlike warrants.

Jurisdiction to make.

Verbal of Courts of record.

Authority co-extensive with validity.

With regard to orders, they are to be divided into two classes, namely (1) those which are similar in form and in regard to the principles of law applicable thereto to warrants, and may therefore not improperly be classed with warrants, and (2) those which have no similarity to warrants, but constitute merely the relationship of principal and agent between the person or body issuing and the person executing them.

As to orders of the first kind, it has been laid down that in so far as the jurisdiction to make them must appear on the face thereof, the rule is equally applicable to them as it is to warrants, (h) and here it is to be observed that where orders are made verbally by Courts of record, (i) they are presumed to be in writing, "for there is or ought to be a record of such order." (k)

As to orders of the second kind—those which constitute merely the relationship of principal and agent, they fall into a different category. They will be found discussed in separate chapters in Part II.

The authority of every officer is dependent on the validity of the proceedings. (l)

[As to Scotland, the law appears to be practically the same, and therefore although this arrangement is not strictly true as to that country, it is for the sake of uniformity maintained throughout this work.]

Again, both warrants and orders (as in fact also do inherent

(g) *Peacock v. Bell*, 1 Saund. 74; *Taylor v. Clemson*, 2 Q. B. 1031; *Harrison v. Wright*, 13 M. & W. 816; Com. Dig. Pl. 3 M. 24, and see Part III., *post*.

(h) *R. v. Hulcott*, 6 T. R. 583.

(i) This includes Quarter Sessions.

(k) *Per Parke, B., Watson v. Bodell*, 14 M. & W. 70.

(l) *Ex parte Page*, 17 Ves. 59; *Cooper v. Asprey*, 3 B. & S. 932.

powers) range themselves into two categories, which may sufficiently accurately be described as (1) those to which the king is a party, and (2) those to which the king is not a party. "The phrase 'where the king is a party' is not a correct statement of the law. The question is whether the process be issued at the instance of a private person in the assertion of a private right, or at the instance of a public authority in the assertion of a public right, where the public weal is interested in the execution of it." (m)

Warrants and orders again of two kinds, viz. (1) king a party, and (2) others which correspond with absolute and relative duties.

This description appears to tally (so far as concrete can with abstract law) with that given by modern writers in jurisprudence of those absolute duties which the individual owes to the State, those which answer to *natural* rights, *i.e.*, those rights which are essential to man's existence in society; as distinguished from those relative duties which correspond with those rights which are the creatures merely of positive law, and of which it has been said that "when they have not the ethical sanction which is derivable from the laws of human life, as carried out under social conditions, they have no sacredness and may rightly be challenged."

It must not be supposed that this is in our law a modern distinction. On the contrary it carries us back to Saxon times and appears to be coeval with the establishment of the kingdom, and to be based on the fact that upon that establishment the local authorities surrendered into the hands of the king the execution of such part of the law as was necessary for the maintenance of his kingdom and that only. (n)

The distinction between *mala in se* and *mala quia prohibita* is practically identical. (o)

The first point which arises for consideration in regard to the execution of warrants and orders to which the king is a party, is as to the amount of force which may be employed for that purpose. And it seems quite clear that *any* degree of force may be resorted to which is *necessary* to carry the execution into effect, the *onus* of proving such necessity resting on the officer who resorts to it. (p). Lord Ellenborough, C.J., in the case last cited,

King a party.

What force may be employed. Onus of proving necessity of.

(m) *Per* Att.-Gen., *arg.* *Burdett v. Abbott*, 14 East 116. This statement was made in 1811, when the numerous statutory powers since conferred were not only not in existence, but were not even contemplated.

(n) See the charter of Hen. I., Rymer 1, p. 12; *Leges Hen. Primi* and Maine's

and Stubbs' works *passim*.

(o) 1 Bl. Comm. 58. As to the right of resistance see *Sacheverell*, 15 How. St. Tr. 1, 202.

(p) *Burdett v. Coleman*, 14 East 190. *Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud*, 5 Rep. 115 b.

adverting to the allegation in the defence that the employment of the military was necessary to assist at the execution of a warrant of the Speaker, says: "Now what application has the military force to the entry? None at all. Not that it is not competent to use military force, or any force which may be necessary for the execution of a warrant of this kind; the degree and quality of the force must vary according to the exigency of the case. The first duty of the officer who is entrusted with the execution of process is to take care that it is executed effectually and with as little injury to the individual or to the public as may be." And in that case evidence was tendered and admitted to show the danger and difficulty of executing the warrant by force against the plaintiff in his own house without the aid and protection of the military. (*q*)

Military, when employed, to act under magistrate.

When it is necessary to resort to the expedient of employing the military, that force must act under the direction of the civil magistrate. (*r*)

Sheriff may raise *posse comitatus*.

In regard to warrants of the High Court, the duty of executing which is imposed on the sheriff, it is laid down that if he finds any resistance in such execution he shall take with him the power of the county and shall go in proper person to do execution, and may arrest the resisters and commit them to prison. (*s*)

Power to break doors.

The next point is as to breaking doors. In *Semayne's Case*, (*t*) it was held that: (1) In all cases where the king is a party the [officer] (if the doors be not open) may break the party's house either to arrest him or to do other execution of the king's process if otherwise he cannot enter. But before he breaks it he ought to signify the cause of his coming, and to make request to open the doors. (*u*) (2) The house of any one is not a castle or privilege but for himself, and shall not extend to protect any person who flies to his house or the goods of any other which are brought or conveyed into his house, to prevent a lawful execution, and to escape the ordinary process of law; and therefore in such cases after denial on request made the [officer] may break the house. But he does this at his peril, for if it turn out that the defendant

Of third person.

(*q*) *Burdett v. Coleman*, 14 East 183. The Scotch law is the same. Campbell's *Law of Citation and Diligence*, cap. xvi. And see Stewart on Diligence.

(*r*) Opinion of Att.-Gen., 65 Com. Jour. 264; Hans. Deb. xvi., 257, 454 h.

(*s*) 50 & 51 Vict. c. 55, s. 8 (2). This power extends to the under-sheriff: Dalt. 104. The duties of the *posse com.* in these cases are of an active nature: *Miller v. Knox*, 6 Sc. 1, 2 Hen. V. st. 1,

c. 8. The Scotch law is the same. Camp. *ubi sup.* In Ireland the power is at common law: it is not an arbitrary one: *R. v. Reilly*, Ir. T. R. 204. See *M'Donnell v. Griffin*, 2 Law Rec. (O. S.) 255.

(*t*) 5 Rep. 91. See *Burdett v. Abbott*, 14 East 157. The Scotch law is the same. Bell's *Dict.*, 19 & 20 Vict. c. 56, s. 34.

(*u*) 2 Hale P. C. 117; *Launock v. Brown*, 2 B. & Ald. 592.

was not in the house, or had no property there he is a trespasser. (x) Officer acts here at his peril. This protection which the law casts around dwellings is confined to dwellings only and does not extend to outhouses. (y) After an escape from custody a man's own house or that of a stranger is no sanctuary, and may be broken after notice of the purpose and demand of admission and refusal. (z) According to the opinion of the Attorney-General above cited, this breaking is limited to the daytime, which means presumably exclusive of night and twilight; (a) but in treason or felony it seems it may take place at any time. (b) On escape. Breaking, at what time.

Having obtained admission the officer may break inner doors, (c) whether the defendant be therein at the time or not. (d) Inner doors. He may also break out in order to complete the execution. (e) Breaking out. Although the officer may force an entrance, he is not authorised in remaining in the house more than a sufficient time to execute the warrant, and in case of an arrest, if the party be from home he is not justified in there awaiting his return. (f) Remaining on premises.

Under such a warrant execution on a Sunday is valid, (g) and it seems that an officer of the law in executing process of this kind is not limited at common law to any time of the day or night. (h) Time of execution.

There is no privilege from arrest in these cases. (i) Ambassadors, however, and their servants, if the servant be not carrying on business, are protected by 7 Anne c. 12, s. 4. If a British subject he is still entitled to privilege unless received by the government on the express condition that it shall not apply. (j) Privilege. Arrest in such cases is a misdemeanour. (k) But where an ambassador or a person having the same privilege is guilty of what in another would be treason, it appears that he may be arrested and his papers seized, and that he may be sent out of the country, (l) and in the case of a non-diplomatic servant guilty of an offence, there is apparently no privilege. (m)

(x) *Johnson v. Leigh*, 1 Marsh 565.

(y) *Brown v. Glenn*, 16 Q. B. 257.

(z) 1 East P. C. 324. See *White v. Wiltshire*, 2 Rolle R. 137.

(a) 3 Inst. 63; 4 Black. 224.

(b) 1 East P. C. 324.

(c) *Lee v. Gansell*, Cowp. 1.

(d) *Ratcliffe v. Burton*, 3 B. & P. 223.

(e) *Pugh v. Griffith*, 7 A. & E. 827. S. Hume, ii. 76.

(f) *Howard v. Gossett*, C. & M. 380.

(g) *Ex parte Whitchurch*, 1 Atk. 53, and as to warrants of justices in indictable offences, see 11 & 12 Vict. c. 42, s. 4. See also L., 7 Will. III. c. 17, s. 7.

(h) *Per Campbell, C.J.*: *Brown v. Glenn*, 16 Q. B. 257.

(i) *In re Freston*, 11 Q. B. D. 545; *Long Wellesley*, 2 R. & M. 639; *Leckmere Charlton*, 2 My. & C. 316; *Gent-Davis v. Harris*, 40 Ch. D. 190; S., *Fraser v. Nicholl*, 2 D. 1254.

(j) *Macartney v. Garbutt*, 24 Q. B. D. 368; *Parkinson v. Potter*, 16 ib. 152.

(k) See *post*, p. 697.

(l) *Wheaton, Int. Law*, 2nd ed., 285.

(m) *Gallatin, Hall Int. Law*, 3rd ed., 175. Servants must be registered at the Foreign Office: 7 Anne c. 12, s. 6.

Officer may
recover pos-
session of
warrant.

When a warrant is given to a defendant for his perusal and he refuses to return it, it appears that the officer has a right to take it from him, and even to coerce his person to obtain the possession of it, provided he use no more violence than is necessary to effect that purpose. (*n*) And the taking away of such a warrant, even if not recovered, does not affect the validity of the execution. (*o*)

The production of a warrant is not apparently unless demanded a condition precedent to its execution. (*p*)

[In Scotland if the officer be not known, he should have on his blazon and show his wand of peace. (*q*) In criminal proceedings, he must be in possession of the warrant when apprehending a party, or in pointing and caption. He should inform the party that he has it, but he is not bound to give it up. (*r*)]

Jurisdiction.

Warrants of superior Courts, unless restricted by what appears upon their face, extend all over the kingdom in which issued. (*s*)

Of superior
Courts at
common law.

Sergeant at
arms (Lords).

Order to.

1. OF SUPERIOR COURTS AT COMMON LAW

THE SERGEANT AT ARMS (LORDS)

This officer is employed by the House of Lords to execute its orders against persons committed for contempt. (*t*) The order of the House is signed by the Clerk of the Parliaments, and is the authority under which the officer acts. (*u*) It usually requires the sergeant to take into custody the person named therein, and to bring him to the bar of the House.

Warrant of
Lord Chan-
cellor.

The order of the High Court backed by the Lord Chancellor to arrest a person under attachment on a return of *non est inventus* by the sheriff, or to obtain the custody of a ward of Court is directed to this officer, but is seldom now issued. (*x*) In the first case it appears that the defendant is not entitled to release without a certificate from the sergeant that his fees have been

(*n*) *R. v. Milton*, 3 C. & P. 31.

(*o*) *R. v. Bailey*, L. R. 1 C. C. 347.

(*p*) *Mackalley*, 9 Rep. 69; *Hall v. Roche*, 8 T. R. 187; *R. v. Howarth*, 1 Moo. C. C. 207; *R. v. Chapman*, 12 Cox C. C. 4.

(*q*) *Scott v. N. Eng. Bank*, xvii. D. 292.

(*r*) *Jamieson v. Main*, 5 Mur. 122;

Hume, ii. 79, 391. See *Cunningham v. Wilson*, 3 F. 65.

(*s*) 4 Bl. Comm. 291. Same with Courts of Session and Justiciary, S.

(*t*) In case of committal of a member the order goes to Black Rod. *Macqueen*, H. L. 68.

(*u*) *May's Parl. Prac.*, 10th ed., p. 69.

(*x*) *Braithwaite's Pr.* 286, 288. See *G. v. L.*, 1891, 3 Ch. 126; 64 L. T. 732.

paid, (y) but it is believed that all the sergeant's fees have been abolished.

As has been above stated, a verbal order of the Lords to this Verbal order. officer is tantamount to a warrant. (z)

THE SERGEANT AT ARMS (COMMONS)

The warrant of the Speaker of the House of Commons is *Sergeant at Arms (Commons)* addressed to this officer. The duty of the sergeant is to take into custody the person named therein and to detain him during the pleasure of the House. The practice is to require the offender to attend at the bar to be discharged on payment of the fees, which are in the nature of a fine. (a) He cannot, however, be detained in any case after the prorogation. (b) *Speaker's warrant.*

As has been above pointed out, a verbal order of the Speaker *Verbal order.* amounts to a warrant. (c) When the Speaker is accompanied by the mace, he has power to order persons into custody for disrespect or breach of privilege committed in his presence. (d)

THE SHERIFF

The warrants (or, as they are usually called in this case, writs) *Sheriff.* of the High Court, save that issued on a committal for contempt, are directed to this officer. He is bound to enter a liberty or franchise when the writ contains the *non-omittas* clause. They are as follow :—

Attachment.—This writ issues to arrest for a contempt of Court, where the contempt is of a criminal nature such as doing something to prevent the course of justice. It need not necessarily be indictable. (e) It is considered as issued on the first moment of the day of issue, (f) and must be indorsed with a recital of the particular contempt. *Attachment for criminal contempt. Indorsement.*

The duty of the sheriff is to take the defendant and keep him in custody, so that he may have him in Court at the return

(y) Cons. Ord. xxx., r. 9.

(z) *Ante*, p. 4.

(a) 82 Com. Jour. 397; 87 *ib.* 365; 97 *ib.* 240; 106 *ib.* 289. The fines are now paid into the Fee Fund, and are not received by the sergeant.

(b) May, p. 89.

(c) *Ante*, p. 4.

(d) May, p. 85. The House of Commons is not strictly a superior Court, although

its warrants are construed in like manner. This will appear *infra*, p. 618.

(e) *O'Shea v. O'Shea*, 15 P. D. 59; *Ex p. Ashwin*, 25 Q. B. D. 271; Order xlv. For the practice in attachment see *In re Evans*, 1893, 1 Ch. 259, and *Harvey v. Harvey*, 26 Ch. D. 644.

(f) *Smallcombe v. Buckingham*, Carth. 419. See *Clarke v. Bradlaugh*, 8 Q. B. D. 63.

of the writ. The property of a defendant may be taken in execution notwithstanding an attachment. (g)

Fee.

For the fee payable, see *post*. (h)

[In Scotland the analogous mode of vindicating the authority of the law, though but rarely resorted to, is by warrant to imprison. (i) The corresponding officer is the messenger-at-arms, but sheriff officers may be authorised to carry out the judgments of the Court of Session. (k) The messenger-at-arms is always described as "sheriff in that part."]

Bench warrant.

Bench Warrant.—This warrant is issued by a judge of the High Court to bring before him any person charged with felony, (l) or by a judge of assize in case of felony or misdemeanour. (m)

Capias utlagatum.

Capias Utlagatum.—This writ, which is practically obsolete, issues in cases of outlawry, and requires the sheriff to take the defendant and have him in Court on a certain day. (n)

*Contumace }
capiendo to be
produced in
Court and de-
livered to
sheriff.*

Contumace Capiendo.—This is employed for the attachment of a contumacious clergyman, and is issued either with or without proclamations. (o) The duty of the sheriff is to take the defendant and keep him in custody pending the order of the Court. The writ must be brought into the King's Bench Division, and there, in the presence of the justices, be opened and delivered of record to the sheriff. (p)

[In Scotland such a matter is not dealt with by the Courts of Law.] (q) In Ireland there is no establishment.

Extent.

Extent.—This writ is the one employed by the Crown to recover a debt due to itself and is called an extent in chief. Under it the debtor may be taken and imprisoned, the Debtor's Act, 1869, which abolished imprisonment for debt not extending to those at the suit of the Crown. (r) Arrest is not now, however, usually resorted to. (s)

What may be
taken.
Goods,

"The sheriff is authorised to take on one writ the person, goods, lands and debts" of the debtor. (t) All goods and chattels

(g) *Roberts v. Ball*, 1 Jur. N. S. 585; *Hide v. Pettit*, 1 Ch. Ca. 91; *Wells v. Gibbs*, 3 Beav. 399.

(h) Page 654.

(i) *Murray v. Bisset*, 15 F. C. 627; *Leys*, 13 R. 1223.

(k) *Robertson*, 20 R. 712.

(l) 1 Ch. Cr. Law 36.

(m) *Ib.* 339. Circuit Courts, S., have all the powers of the High Court of Jus-

ticiary. Hume, ii. 30.

(n) The writs of *capias ad respondendum* and *exigent* are ancillary to this writ.

(o) See 55 & 56 Vict. c. 32, s. 7.

(p) *Dale's Case*, 6 Q. B. D. 376.

(q) 26 & 27 Vict. c. 47.

(r) *In re Smith*, 2 Ex D. 47.

(s) *R. v. Kinnear*, 3 Price 536; *R. v. Plaw*, *ib.* 94.

(t) *Chit. Prerog.* 262, 264.

except necessary victuals of himself and family, and oxen and beasts of the plough, (u) including those conveyed away fraudulently to defeat the execution (x) and specialties (y) and concurrently, freehold estate (z) and that vested in trustees, (a) an equity of redemption, (b) and an equitable mortgage by deposit, if there is reason to believe that the mortgagee knew of the claim of the Crown, (c) may be seized, and so may leaseholds either as goods or lands. (d)

As to what cannot be taken, this includes goods pawned or pledged or demised or lent prior to the *teste* of the writ for a term certain, during the term, or wherever a third person has a lien as an agent or factor or otherwise (e) until such lien is satisfied. (f) And it is the same with a sum of money payable on a negotiable instrument not arrived at maturity, (g) and with property vested in trustees for a bankrupt, (h) or assigned to creditors without fraud. (i)

As to lands, where a judgment has been obtained against them before the commencement of the Crown suit, whether an *elegit* thereunder has been sued out or not, they are not seizable, (k) nor are copyholds, (l) nor those vested in a purchaser or mortgagee. (m)

Under an *extent* against partners the rule is the same as that under a *fi. fa.* (n)

An appraisement must be made by a jury summoned for the purpose. (o) And on the return of the inquisition a *venditioni exponas* issues to sell the effects to the amount of the debt.

Extent in aid which is now practically in disuse is given to a Crown debtor to recover a debt due to him. (p) *Diem clausit extremum* is the writ under which a Crown debt is recovered from the estate of a deceased debtor. It is followed by a *venditioni exponas*.

Where writs of the subject and the Crown concur, that of the Crown takes priority so long as that at the suit of the subject

(u) West, *Extents*, p. 172.

(x) *Ibid.*, p. 115.

(y) *Ibid.*, p. 171.

(z) *Harbert*, 3 Rep. 12.

(a) *Ibid.*

(b) Wat., 2nd ed., 367; *R. v. De la Motte*, 5 R. R. 714.

(c) *Broughton v. Davis*, 1 Price 216; *Casberd v. Att.-Gen.*, 1 Dan. 238.

(d) Wat., p. 361.

(e) *R. v. Lee*, 6 Price 369.

(f) West, p. 116.

(g) Wat., p. 369.

(h) *R. v. Marsh*, McLel. & Y. 250.

(i) West, p. 115.

(k) West, p. 160.

(l) *R. v. Ld. Lisle*, Parker, 195.

(m) 18 & 19 Vict. c. 15, s. 11; and see *R. v. Lambe*, 13 Price 649; and 28 & 29 Vict. c. 104, s. 48; 29 & 30 Vict. c. 39, s. 42; 1. 7 & 8 Vict. c. 90, s. 11; 11 & 12 Vict. c. 120, s. 13; 34 & 35 Vict. c. 72, ss. 10-12.

(n) *R. v. Sanderson*, Wight 50; and see *post*, p. 227.

(o) West, p. 115.

(p) West, p. 22. See 57 Geo. III. c. 117.

remains unexecuted, (q) "in other words, until the property in the goods is changed." (r) And this priority extends as against the landlord for rent due, (s) and also to growing crops. (t) Laches of the officer does not affect the right of the Crown. (u)

And where the Crown has a *lien*, as under the exeise laws, (w) it will override that of the subject. (x) It is, however, commensurate with the interest of the debtor, (y) and can only be discharged by an actual *bona fide* sale. (z) The fees payable are stated *post*. (a)

Fees.

Scotland.
Extract decree.

[In Scotland this writ has been abolished, and an extract decree is a sufficient warrant to any messenger-at-arms to execute charge, arrestment and poinding in terms thereof. (b) He may recover the amount and take payment thereon, (c) and may arrest property in the hands of a debtor to the Crown debtor. (d) He may charge the debtor to pay within a certain number of days, (e) and at the expiration thereof may "pound the whole moveable effects without exception of such Crown debtor, including banknotes, money, bonds, bills, crops, stocking and implements of husbandry of all kinds in or towards payment of the sums of money therein mentioned." (f) This does not affect what is not truly the debtor's property, (g) the criterion being the completion of the real right. (h) The poinding is to be in the ordinary form, (i) except that poinded effects may be taken possession of, and if there be no offerer at the sale the officer may retain them on behalf of the Crown. (k)

Goods.

Sale.

The extract and execution of charge may be registered within a year and a day, and thereupon a warrant to imprison may issue. (l)

The sheriff-clerk may be authorised to seize and detain the books of account and other books and papers of the debtor, (m)

(q) *Per* Macdonald, C.B.: *R. v. Wells*, 16 East 278, n.

(r) *Per* Chitty, J.: *Att.-Gen. v. Leonard*, 38 Ch. D. 626; *Grove v. Aldridge*, 9 Bing. 428; *Giles v. Grover*, 1 Cl. & F. 72; *Edwards v. Reg.* 9 Ex. 628.

(s) 8 Anne c. 14, s. 1; *R. v. De Caux*, 2 Price 17; 1. 9 Anne c. 8, s. 1.

(t) 56 Geo. III. c. 50 (E).

(u) *R. v. Renton*, 2 Ex. 220; *Att.-Gen. v. Chitty*, Parker, 48.

(w) *Att.-Gen. v. Walmsley*, 12 M. & W. 179.

(x) 4 & 5 Vict. c. 20, s. 24.

(y) *R. v. Topping*, McLel. & Y. 544.

(z) *Att.-Gen. v. Trueman*, 11 M. & W.

694.

(a) Page 654.

(b) 19 & 20 Vict. c. 56, s. 28.

(c) S. 29.

(d) S. 30.

(e) S. 31.

(f) S. 32; *Spears v. Murray*, 6 Cl. & F. 180.

(g) *Barnet's Crs. v. Murray*, Elchies notes 16 and 400.

(h) *R. v. Lambton*, 5 Price 428; *R. v. Cotton*, Parker 112.

(i) *Post*, p. 443.

(k) 19 & 20 Vict. c. 56, s. 32.

(l) Ss. 33, 34.

(m) S. 35.

and the effects of a deceased debtor may be attached by arrestment or poinding. (n) Deceased debtor.

The priority as to moveables is as in England. But 6 Anne Priority. c. 26, which established the Court of Exchequer, excepted heritable property. Accordingly here, in competitions between the diligence of the Crown and that of the subject, the preference is determined by the same rules as regulate competitions between subjects. (o)

As to landlord's hypothec, it is not available against the Hypothec. Crown, and even after sequestration of the effects by the landlord and a warrant to sell, there is no pledge thereby created in favour of the landlord, and the Crown will be preferable if its claim be made before the sale of the effects be reported and the landlord's process finally closed, until which time there is not a judgment in the sense of the English law. (p) Mercantile sequestration under the Bankrupt Act has no effect, nor is a discharge under that Act effectual against the Crown. (q)

By the above Act, which abolished writs of extent, it is provided that nothing therein should affect the preference of the Crown in competition with other creditors, and in all questions of preference or competition, the execution of any charge at the instance or on the behalf or for behoof of the Crown, and in the case of deceased Crown debtors to whom no such charge has been given in their lifetime, the execution of any arrestment or poinding at the instance, etc., of the Crown, shall be deemed to be Equivalent to extent. equivalent in all respects to the *teste* of a writ of extent according to the existing law and practice. (r)

The sanctuary afforded no protection, (s) and the Crown will not be prejudiced by the neglect or omission of its officers. (t)]

Levari Facias.—This writ issues against the inhabitants of *Levari facias*. a township or a Crown debtor, on conviction and fine. (u)

In the latter case, where there is imprisonment, the writ may issue before the expiration of the term of imprisonment. (x)

If the debtor's goods be *bona fide* sold, the claim of the Crown will be defeated unless there be a *lien*, as in the case of duties of excise. (y)

(n) S. 36.

(o) *Post*, p. 443.

(p) *Robertson*, M. 7891.

(q) 19 & 20 Vict. c. 79, s. 143.

(r) C. 56, s. 42.

(s) *Ersk.*, bk. iv., tit. iii., s. 25.

(t) *Micklam*, 22 D. 1427; *Miller's*

Trustees, 11 R. 1046; 1600, c. 14.

(u) I. see 1 Vict. c. 54, ss. 6, 8.

(x) *R. v. Woolf*, 2 B. & A. 609; 1 Chit. 428.

(y) *Att.-Gen. v. Fort*, 8 Price 364, and see *supra*.

Restitution.

Restitution.—This writ, which is only granted where the party cannot be restored by the ordinary law, (z) is now limited to convictions on indictments for forcible entries into and detainers of hereditaments and premises. (a) When used to restore a party out of possession where the indictment is quashed, it is called re-restitution. (b)

THE TIPSTAFF

Tipstaff.

Warrants and orders of committal.

Warrants and orders of committal of the High Court are delivered to this officer for execution, and, as has been already seen, where the order is verbal, it is of equal force with a warrant. (c) The contempts here are of a criminal nature. (d)

Superior Courts have power to punish by fine and imprisonment for contempt, whether committed in the face of the Court or not. (e)

Fee.

The duty of the tipstaff is to arrest the defendant, and deliver him over for detention to the gaoler. The fee payable on an arrest is £1 ls., together with reasonable charges for travelling, etc.

[As to Scotland the corresponding officer is the macer. Every Court has power to punish summarily disorders or acts of contempt, when sitting. Where it is indirect it should be brought under notice by complaint of the public prosecutor. (f)]

In Ireland orders of committal are directed to the sheriff or to any peace officer or to such other person as the Court or judge may order. (g) The Assize Court has all the powers of the High Court. (h)

THE GAOLER

Gaoler.

Lords' order.

The order of the Lords to this officer requires him to detain the prisoner "during the pleasure of the House." The duration of the session is immaterial in this case. (i)

Speaker's warrant.

The warrant of the Speaker is to the same effect; but, on the

(z) 2 Lill. Abr. 473.

(a) *R. v. Williams*, 4 M. & Ry. 471; *R. v. Hake*, *ib.* 483.

(b) *R. v. Jones*, 1 Str. 474. A similar writ appears to be used in S. in a more extended sense—as in cases of mistake, stolen goods, etc. See Bell's Principles, 8th ed., 526; *Todd v. Armour*, 9 R. 901.

(c) Page 4. Where the defendant is more than twelve miles from the Court the warrant of the L. C. is necessary. D. C. F., 4th ed., 401.

(d) For the practice on committal see *In re Evans*, *ante*, p. 9.

(e) 4 Black. 285, and see *Van Sandau v. Turner*, 6 Q. B. 773.

(f) Macdonald, *Cr. Law*, 406; Mackay's *Pr.*, i. 244.

(g) I. Order XLIV. r. 3.

(h) *In re McAlecco*, I. R. 7 C. L. 146.

(i) *Per Denman, C.J.: Stockdale v. Hansard*, 9 A. & E. 127; 43 Lords Journ. 105.

prorogation of Parliament, the prisoner is entitled to immediate discharge. (*k*)

In the case of writs of the High Court, a statutory duty is ^{High Court.} imposed on the gaoler to detain the prisoner; (*l*) and where a prisoner is brought up by the serjeant-at-arms, an order is (if necessary) made to turn him over to the gaoler. As to the warrant of committal which is executed by the tipstaff, where the committal is by way of punishment and not by way of process, it ought to be certain as a sentence, and the term of imprisonment should be specified. (*m*) In the case of prisoners sentenced at the assizes, there is no warrant, but a copy of the calendar is ^{Assizes.} delivered to the gaoler, and is the authority under which he detains the prisoners. This is signed by the judge. (*n*) Where persons are committed for seditious libel or contempt, they are to be treated as first-class misdemeanants. (*o*) But this does not ^{First-class mis-} apply to a prisoner committed for acting as a solicitor when not ^{demeanants.} duly qualified. (*p*)

On the receipt of a pardon or remission, or order of release, or ^{Pardon, re-} to admit to bail, the gaoler must release according to the terms ^{lease, bail.} thereof. (*q*)

In attachment and committal, if the term of imprisonment does not appear on the writ or order, application to the Court must be made for discharge; (*r*) but no such application is necessary where the term does so appear. (*s*) Where the con- ^{Discharge.} tempt has been cleared, the defendant cannot be detained for non-payment of costs. (*t*)

A person sentenced to imprisonment for one calendar month is entitled to be discharged on the day of the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect. (*u*) And the time runs from the date of the warrant of commitment, and not from that of the original

(*k*) May, p. 89.

(*l*) 28 & 29 Vict. c. 126, s. 82. 'S. 19 & 20 Vict. c. 56, s. 34; 40 & 41 Vict. c. 53, s. 32. I. c. 49, s. 40. As to penal servitude see 16 & 17 Vict. c. 99, s. 6; I. 17 & 18 Vict. c. 76.

(*m*) *Crawford*, 13 Q. B. 629; *R. v. James*, 5 B. & Ald. 894; and see *In re Cobbett*, 7 Q. B. 187.

(*n*) *R. v. Bethel*, 5 Mod. 22; *Christ. Black. iv.*, 4044.

(*o*) 40 & 41 Vict. c. 21, ss. 40, 41. S., c. 53, ss. 46, 47 and rules. I. c. 49, s. 49.

(*p*) *Osborne v. Millman*, 18 Q. B. D. 471.

(*q*) As to licenses, see 27 & 28 Vict. c. 112, Sched. Pardons and remissions are a

branch of the Royal Prerogative. They do not, therefore, fall in this category, but, of course, must receive the like attention. The prerogative is confined to pardon. The crown has no dispensing power. *The Seven Bishops*, 12 St. Tr. 183; 3 Mod. 212.

(*r*) *Nally v. Aylett*, 30 L. T. 783; *Greaves v. Keane*, 4 Ex. D. 73; *McCombe v. Gray*, 4 L. R. 1r. 432.

(*s*) *Re Edwards*, 21 Ch. D. 230.

(*t*) *Jackson v. Mawby*, 1 Ch. D. 86. Cf. *McTaggart v. Howard*, 1903, 2 I. R. 557.

(*u*) 61 & 62 Vict. c. 41, s. 12. As to part payment of a fine, see s. 9, and 62 & 63 Vict. c. 11.

arrest; (y) and when the term expires on a Sunday, Good Friday or Christmas day, the prisoner is entitled to discharge on the preceding day. (z)

Habeas corpus. On receipt of a *habeas corpus* or of an order to produce in Court, which is to the same effect, (a) the gaoler must produce the body of the prisoner in Court as required.

Copy of commitment. This officer is also required, within six hours after demand, to deliver a true copy of the commitment of any person in his custody, (b) and this has been held to apply to the case of a person detained under warrant of the Chief Secretary for Ireland. (c)

2. OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW

Other than those of Superior Courts at Common Law. As was stated at the outset of the last chapter, warrants and orders other than those of superior Courts, at common law, occupy in law a position different from those discussed in that chapter. In regard to these last, all that the officer has to do is to satisfy himself that the warrant or order issues in a due and regular manner, and he will then be justified in executing it, for "he ought not to examine the judicial act of the Court, whose servant he is, nor exercise his judgment touching the validity of the process in point of law, but is bound to execute it, and is therefore protected by it." (d)

But when we come to consider warrants and orders which issue under statutory authority, or of inferior Courts at common law, the case is different, and the reason for this is that in the case of Courts and officers other than the superior Courts acting according to the course of the common law, the maxim *Omnia præsumuntur ritè esse acta* does not apply to give jurisdiction. (e) Such a warrant or order therefore must contain not only the cause of issue and the period of detention (if any), (f) but facts sufficient to show jurisdiction to make the particular order must

Omnia præsumuntur ritè esse acta not applicable.

Cause of issue, period of detention, facts giving jurisdiction, certain date, apt conclusion.

(y) *Henderson v. Preston*, 21 Q. B. D. 362; and see *Bowdler's Case*, 12 Q. B. 612.

(z) 28 & 29 Vict. c. 126, s. 41; 61 & 62 Vict. c. 41, s. 12. S. 40 & 41 Vict. c. 53, s. 33. As to the duty of an administrator of a convict's property on discharge, see *Carr v. Andersm*, 1903, 2 Ch. 279.

(a) 16 & 17 Vict. c. 30, s. 9. S., 1701, c. 6; 40 & 41 Vict. c. 53, s. 32. I. c. 49.

(b) 31 Car. II. c. 2, s. 5. S. 1701, c. 6.

(c) *Sedley v. Arbouin*, 3 Esp. 174.

(d) *Turner v. Felgate*, 1 Lev. 95; *Cotes v. Michill*, 3 ib. 20.

(e) *Per Holroyd, J. : R. v. All Saints*, 7 B. & C. 790. See *R. v. Totness*, 11 Q. B. 80.

(f) 2 Inst. 52.

also appear on the face of the instrument, (g) otherwise it is no justification to the officer who executes it. (h)

The *mittimus* ought to have these circumstances. It must contain a certain cause, and therefore, if it be for felony, it ought not to be generally *pro felony*, but it must contain the special nature of the felony, so that it may appear to the judges upon a *habeas corpus* whether it be felony or not. It must have a certain date, and an apt conclusion, (i) such as "him safely to keep until he may be dealt with by law." (k) Where commissioners committed a bankrupt for not answering questions, the Court ordered his discharge, as the questions were not specified so that the Court might judge of their legality. (l) And where a warrant left a blank for the Christian name of the person to be apprehended, giving no reason for the omission, it was held too general, and a resistance to such an arrest lawful, and the killing of the person attempting to execute it not murder. (m) But a warrant to arrest a party to the end that he may become bound at the next sessions has been held to mean those next after the arrest, and therefore the officer may in such case justify an arrest after the sessions next ensuing the date of the warrant. (n) It can, however, only be executed by the person to whom it is addressed. (o) Where it appears on the face of the proceedings that there is jurisdiction, it will be intended that the proceedings are regular, (p) otherwise no such intendment will be made. (q) And where the Court or officer has merely proceeded erroneously in the issue of process, but not without jurisdiction, the executing officer will be justified. (r)

To be executed by addressee.
Where proceedings deemed regular.

Erroneous process.

There appears to be no distinction between warrants and orders so far as regards the question of jurisdiction. (s) In orders as well as in warrants the facts conferring jurisdiction must appear thereon. "We cannot intend for or against the order, but must decide according to the words. However high the authority may be where a special statutory power is exercised

Orders, jurisdiction as to.

(g) *Harrison v. Wright*, 13 M. & W. 816; *Christie v. Unwin*, 11 A. & E. 373; *Muskett v. Drummond*, 10 B. & C. 153.

(h) *Andrews v. Marria*, 1 Q. B. 17; *Currait v. Morley*, *ib.* 28. Cf. *Strang*, 11 D. 378.

(i) 2 Hale P. C. 122; *Kendal*, 5 Mod. 78; *Cawtle v. Seymour*, 1 Q. B. 889.

(k) 2 Inst. 52; *Bracy*, 1 Ray. 99; *Groome v. Forrester*, 5 M. & S. 314; *Daniell v. Phillips*, 1 Cro. M. & R. 662.

(l) *Ex parte Leake*, 9 B. & C. 240.

(m) *R. v. Hood*, 1 Moo. C. C. 281.

(n) *Mayhew v. Parker*, 8 T. R. 110.

(o) *Symonds v. Kurtz*, 61 L. T. 559; *Blue v. Fullerton*, 1 R. 10 C. L. 233.

(p) *Barnes v. Keane*, 15 Q. B. 75; *Baker v. Cave*, 1 H. & N. 674.

(q) *Dempster v. Purnell*, 4 Sc. N. R. 39. See *Moffat v. Shaw*, 23 R. 18; *Ballentine v. Ross*, 2 Mur. 529.

(r) *The Marshalsea*, 10 Rep. 68 b, 76 a.

(s) *R. v. Hulcott*, 6 T. R. 583; *R. v. All Saints*, 7 B. & C. 785; *Duy v. King*, 5 A. & E. 367.

the person who acts must take care to bring himself within the terms of the statute. Whether the order be made by the Lord Chancellor or by a justice of the peace, the facts which gave the authority must be stated.” (t) And where any Act confers a power to make, grant or issue any instrument, expressions used in the instrument are, unless the contrary intention appears, to have the same respective meanings as in the Act conferring the power. (u)

True distinction is between warrants and orders which issue (1) after adjudication, and (2) where no adjudication.

There is, however, an important distinction which must be here pointed out between the cases where warrants and orders of the class we are now considering, issue (1) after adjudication, and (2) where there has been no adjudication. And this distinction is mainly important in regard to the liability of the officer who executes the process. It may be thus stated: Where an officer executes a warrant or order made under statutory jurisdiction, or of an inferior Court at common law, after an adjudication, he is protected where it appears on the face of the instrument that (1) the Court or person from which it issues had jurisdiction, or (2) apparently had jurisdiction to issue such warrant or order. (x)

Where, however, he executes such a warrant or order where there has been no previous adjudication, the protection is confined to the case only where the jurisdiction to make it appears on the face of the instrument, and in the event, such jurisdiction has been properly exercised, and does not extend to the second case above-mentioned, namely, where it reasonably appears to have been within the jurisdiction, although it subsequently turn out to be in excess of it. (y).

What is adjudication.

As to what is an adjudication, the principle contained in the maxim *audi alteram partem* is here applicable. (z) It has been laid down that no man is to be condemned, punished or deprived of his property in any judicial (a) or other similar proceeding (b) unless he has had opportunity of being heard. (c) And this rule has been held to apply to judges of inferior Courts, (d) to justices, (e) and to cases arising under the Metropolis Management

(t) *Per Coleridge, J.*: *Christie v. Unwin*, 11 A. & E. 373; and see *Brook v. Jenney*, 2 Q. B. 275; and *Taylor v. Clemson*, *ib.* 978.

(u) 52 & 53 Vict. c. 63, s. 31; and see s. 36.

(x) *Andrews v. Marris*, 1 Q. B. 17; *Ashcroft v. Bourne*, 3 B. & Ad. 684; *Brittain v. Kinnaird*, 1 Br. & B. 432.

(y) *Foster v. Dodd*, L. R. 3 Q. B. 67; *Wilkins v. Hemsworth*, 7 A. & E. 807.

(z) *Wood v. Wood*, L. R. 9 Ex. 190.

(a) *Re Hammersmith Rent-charge*, 4 Ex. 96; *Gill v. Bright*, 41 L. J. M. C. 22.

(b) See *Russell v. Russell*, 14 Ch. D. 471.

(c) *Wood v. Wood*, *ubi sup.*

(d) *Kinning v. Buchanan*, 8 C. B. 271; *Abley v. Dale*, 10 C. B. 62; *Dews v. Riley*, 11 C. B. 434.

(e) *Bessell v. Wilson*, 1 E. & B. 489; *Hammond v. Bendyshe*, 13 Q. B. 869; *R. v. Totnes Union*, 7 Q. B. 690.

Act. (f) It prevails universally unless excepted by the express wording of the Act conferring the power. (g)

KING'S MESSENGERS

The Secretary of State (h) has power at common law to issue *King's messengers* to these officers a warrant for the arrest of a person charged with treason or other offences affecting the Government. (i)

POST OFFICERS

The Secretary of State has power also to issue to these officers *Post officers*. warrants for the opening, detaining and delaying of post letters. There must be an express warrant for every such opening, detaining or delaying. (k) This is a prerogative warrant. (l)

MINISTER, CHURCHWARDENS AND OVERSEERS

The coroner has power at common law to issue a warrant *Minister, etc.* requiring these officers to exhume the body of a person within a reasonable time after burial upon which it is his intention to hold an inquest. (m)

Orders of the Privy Council issue directing such acts to be done by and under the direction of the churchwardens or such other person as may have the care of any vaults or places of burial, as shall prevent them from becoming or continuing dangerous or injurious to the public health. (n) If not done the Secretary of State may direct them to be done. (o) These orders apply only to existing burial grounds. (p) A faculty from the Ordinary is necessary. (q)

Orders of the Secretary of State to remove any body interred. (r)

(f) *Cooper v. Wandsworth*, 14 C. B. N. S. 180.

(g) *Re Hammersmith Rent-charge*, *whi sup.* See *post*, p. 624.

(h) As to the visitation of religious houses, see 25 Hen. VIII., c. 21, s. 20.

(i) 1 Ch. Cr. Law, 34, 107; Hawk. P. C. b. 2, c. 16; *R. v. Kendal*, 1 Ld. Ray. 65; *R. v. Wilkes*, 2 Wils. 151; *R. v. Despard*, 4 R. R. 563. A like power is conferred on the Privy Council, but this is obsolete. In *S.* the Lord Advocate appears to have the like power: *Bell's Dict.*

(k) Cases have occurred in which letters have been tampered with, and the Home Secretary has disclaimed any knowledge of the matter. Such tampering is a

misdemeanour, see *post*, p. 27.

(l) Ordinances of 1656, 1663 and 1683, by which the Post Office was established.

(m) *Jervis*, 5th ed., p. 47. Not applicable to *S.* The form is "that you forthwith cause the body of the said X. to be taken up and safely conveyed to in the said parish, that I with my inquest may have a view thereof."

(n) 20 & 21 Vict. c. 81, s. 23. These appear in the *London Gazette*. Not applicable to *S.* or *I.*

(o) 22 Vict. c. 1, s. 1.

(p) *Foster v. Dodd*, L. R. 3 Q. B. 67.

(q) *Lee v. Hawtrey*, 1898, P. 63.

(r) 20 & 21 Vict. c. 81, s. 25. See *Re Talbot*, 1901, P. 1.

THE SHERIFF

Sheriff.

Courts of assize and quarter sessions are authorized to issue to this officer a writ (or warrant) for the recovery of fines, estreats, recognisances and the like. (s) This writ empowers the sheriff to levy the amount of the fine, etc., and, in the event of such amount not forthcoming, to take the defendant and lodge him in gaol until payment or until discharged by due course of law. If the defendant be not in his county he may issue his warrant to the sheriff of the county where the offender is found, who is required to execute it. (t) For the fees see *post*. (u)

THE HIGH BAILIFF

High bailiff.

The warrants and orders of the County Court in this category are the following :—(x)

Warrants of committal for wilful insult (y) to the judge or any juror, or witness, or any registrar, bailiff, or officer of the Court, or in going to or returning from the Court, or wilful interruption of the proceedings of the Court, or other misbehaviour in Court. (z) To observe to a judge in the course of, and in reference to his judgment, that “that is a most unjust remark,” is an insult, and if not withdrawn amounts to such a wilful insult as is contemplated by these sections. (a) An unqualified person cannot be committed for acting as a solicitor. (b)

The judge may under these sections verbally order this officer to take into custody the offender and detain him until the rising of the Court. And such order amounts to an adjudication as to the fact of wilful insult. (c)

(s) See *Ex parte Edmonds*, 23 J. P. 324.

(t) 4 Geo. IV. c. 37, s. 3; 22 & 23 Vict. c. 21, s. 36. As to S. see 6 Aune c. 53, ss. 7, 11. As to I. 1 & 2 Will. IV. c. 44, s. 9, but they are to be there levied by constabulary, 6 & 7 Will. IV. c. 13, s. 16; 14 & 15 Vict. c. 90, s. 3.

(u) Page 654. See also 39 & 40 Vict. c. 36, s. 250.

(x) The duties of this officer are in some cases performed by the registrar, but the liability in such cases is the same as that of the high bailiff; 51 & 52 Vict. c. 43, s. 37. See s. 77 as to execution in another district. The words of the warrant of attachment are: “forthwith to arrest and apprehend the defendant, and him safely convey and deliver to the governor of the prison, and you

the said governor to receive the defendant until the further order of this Court.”

(y) The warrant in this case runs: “to take the said X. and to deliver him to the governor of the prison, and you the said governor to receive the said X., and him safely to keep in the said prison for days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.”

(z) 51 & 52 Vict. c. 43, ss. 161, 162; *Levy v. Moylan*, 19 L. J. C. P. 308.

(a) *R. v. Jordan*, 36 W. R. 589; and see *R. v. Lambeth*, *ib.* 475.

(b) *R. v. Brompton, J.*, 1893, 2 Q. B. 195.

(c) See *R. v. Jordan*, *ubi sup.*; *Re Pater*, 33 L. J. M. C. 142.

[In Scotland the sheriff who is a judicial officer has power to commit for contempt.] (d) In Ireland the County Court has the same power. (e)

CONSTABLES

The warrants and orders of this class which are executed by *Constables*. these officers are :—

Those of quarter sessions who may commit by order to the custody of its officers without warrant “for there is or ought to be a record of such commitment, and the order given *sedente curiâ* would probably be a protection to the officer.” (f) In the case of prisoners sentenced at the sessions there is a calendar as at the assizes. (g) Committal by quarter sessions.
Calendar.

The coroner has power to order the arrest by warrant of a person found by the verdict of the jury guilty of murder or manslaughter, (h) also of a witness for contempt of a summons, (i) or for refusing to (1) give evidence, (2) sign his information, or (3) enter into recognisances. Warrant of coroner.

Inferior Courts of Record have power to commit for contempt only when committed in the face of the Court. (k) Contempt of inferior courts.

Justices may order arrest by warrant for not appearing to a summons or to answer a charge. (l) And warrants of commitment either for punishment or for trial other than in civil matters (m) fall in this category. (n) They must be executed by the constable to whom addressed, (o) and no conditions can be annexed by the justices to the performance of the duty imposed, which the law does not warrant. (p) Committal by justices.

The warrants of distress (q) which issue on a conviction or Distress warrants.

(d) *Hamilton*, 30 Jur. 608; *More v. Anderson*, 4 D. 786.

(e) 14 & 15 Vict. c. 57, s. 151.

(f) *Per Parke, B., Watson v. Bodell*, 14 M. & W. 70; 2 Hale P. C. 122; and see *In re Clarke*, 2 Q. B. 619.

(g) See *ante*, p. 15. In S. justices have all the powers of those in England. 6 Anne c. 6, s. 2.

(h) 50 & 51 Vict. c. 71, s. 5.

(i) *Jervis*, 5th ed., p. 47. This warrant is also addressed to the coroner's officer. Not applicable to S. As to I. see 9 & 10 Vict. c. 37, s. 35.

(k) *R. v. Lefroy*, L. R. 8 Q. B. 134.

(l) 11 & 12 Vict. c. 42, s. 1.

(m) See *post*, p. 244. The warrant of commitment runs: “to take the said X. and him safely to convey to the gaol at _____ and there to deliver him to the keeper thereof together with, this

precept and I do hereby command you the said keeper of the said _____ to receive the said X. into your custody in the said _____ and there safely to keep him until he shall be thence delivered by due course of law.” As to whipping see 42 & 43 Vict. c. 49, ss. 10, 11.

(n) Justices cannot commit for contempt merely: *Mayhew v. Locke*, 7 Taunt. 63; *Ex parte Hyndman*, 50 J. P. 151, except for refusal to answer, 11 & 12 Vict. c. 42, s. 16; c. 43, s. 7; 7 & 8 Vict. c. 101, s. 70. *Contra* in I. see 14 & 15 Vict. c. 93, s. 9, and *In re Rea*, 2 L. R. Ir. 429.

(o) *R. v. Sanders*, L. R. 1 C. C. 75.

(p) *R. v. Middlesex*, 12 L. J. M. C. 36; *R. v. Handsley*, 7 Q. B. D. 398.

(q) This warrant runs: “forthwith to make distress of the goods and chattels of the said X., and if within the space of _____ days next after the making of such

order by justices in matters falling within this class, are to be here included. The conviction or order is enforced by this means in all cases save those under the Game, the Malicious Damage to Property and Person and a few other Acts, where the statute neither directs the same to be so levied or no mode of levying the penalty is provided. (*r*)

How executed. By 42 & 43 Vict. c. 49, s. 43 (1), these warrants are to be executed by or under the direction of a constable, (2) save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at least shall intervene between the making of the distress and the sale, and where written consent is so given as aforesaid, the sale may be made in accordance with such consent.

Sale. (3) Subject as aforesaid the distress shall be sold within the period fixed by the warrant, and, if not so fixed, then within the period of fourteen days from the date of the making of the distress unless the sum for which the warrant was issued and also the charges for taking and keeping the said distress are sooner paid.

Within what time. (4) Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods, the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles a conspicuous mark. . . .

Goods not to be removed. (7) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, (s) and shall render to the owner the overplus, if any, after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant.

But impounded. (8) Where a person pays or tenders to the constable charged with the execution of a warrant of distress, the sum mentioned in such warrant, or produces the receipt for the same of the clerk of the Court of summary jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

Costs; over-plus. By sect. 21 (2) wearing apparel and bedding (*t*) of a person and his family and, to the value of £5, the tools and implements of his trade, shall not be taken.

Superseded on payment of debt and costs. distress the said sums together with the reasonable charges of taking and keeping the distress shall not be paid that then you do sell the said goods and chattels so by you distrained and do pay the money arising by such sale into clerk of the justices that he may pay and apply the same as by law is directed and may render the overplus if any on demand to the said X. and if no such distress can be found then that you certify the same unto me to the end that such further proceedings may be had thereon as to the law doth appertain."

(*r*) 11 & 12 Vict. c. 43, s. 19, and see

s. 17; and *Re Clew*, 8 Q. B. D. 511. In S. by 44 & 45 Vict. c. 33, s. 8 (1) in default of recovery of sufficient goods there may be a warrant to imprison. (2) All warrants of poinding and sale are to be executed in manner provided by the Small Debts Act, 1837, except that notice of sale is to be by advertisement. See *post*, p. 448. In I. there are the like powers to those in England: 14 & 15 Vict. c. 93, s. 32.

(s) Sub-s. (5) imposes a summary penalty of £5 for excessive charges or other exaction.

(*t*) See *Davis v. Harris*, *post*, p. 242. As to I. 51 & 52 Vict. c. 47, s. 5.

In the event of another and civil execution being in at the same time, these warrants being ones in which the king is interested have priority. (u) Priority of warrant.

The following warrants and orders issue without adjudication.

The Secretary of State issues his warrant under the Extradition Act, (v) and any person to whom such warrant is directed may receive, hold in custody, and convey within the jurisdiction of the foreign State the criminal mentioned therein; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, he may be retaken in the same manner as any person accused of any crime. (x) This Act applies only subject to treaty, (y) and generally not to offences of a political character. (z) If the description of the offence is sufficient, the warrant will be good. (a) A person already in custody may be detained. (b) It applies to all persons of whatever nationality committing the specified crimes in the treaty countries, unless by treaty specially exempted. (c) The offences in the schedule to the Act (d) are all indictable by our law. Extradition.

Also under the Fugitive Offenders Act, (e) and in this case there is the same proviso as to retaking on an escape. (f) Fugitive offenders.

And under the Criminal Lunatics Acts (g) such warrant may be executed by any constable, as if it were for the arrest of a person charged with an offence. (h) Criminal lunatics.

Quarter sessions have power to issue a bench warrant for the arrest of a person charged with felony or misdemeanour. (i) Bench warrant.

Where a riot, rout or unlawful assembly exists, a justice present Riot.

(u) See *Att.-Gen. v. Leonard*, ante, p. 12.

(v) 33 & 34 Vict. c. 52, s. 11. The form is: "order you the said keeper to deliver the body of the said X. into the custody of the said A., and I command you the said A. to receive the said X. into your custody and to convey him within the jurisdiction of the said and there place him in the custody of any person or persons appointed by the said to receive him."

(x) *Ibid.* See post, p. 39. As to an expulsion order under the Aliens Act, 1905, see 5 Ed. VII. c. 13, s. 3.

(y) See *R. v. Wilson*, 3 Q. B. D. 42.

(z) *In re Castioni*, 1891, 1 Q. B. 149; cf. *Re Meunier*, 1894, 2 Q. B. 415.

(a) *Ex parte Terraz*, 4 Ex. D. 63; *In re Bellescontre*, 1891, 2 Q. B. 122.

(b) *R. v. Weil*, 9 Q. B. D. 701.

(c) *R. v. Ganz*, ib. 93.

(d) And see 36 & 37 Vict. c. 60, s. 8.

(e) 44 & 45 Vict. c. 69, s. 6. The form is: "that the said X. shall be delivered

into the custody of A., a constable of the police force, for the purpose of his being conveyed to , and delivered into the custody of the proper authorities."

(f) *Ibid.*, s. 28. *Curlin v. Cape Colony*, 12 R. 50.

(g) 47 & 48 Vict. c. 64, s. 15, and see 23 & 24 Vict. c. 75, s. 2; 39 & 40 Geo. III. c. 94, and 46 & 47 Vict. c. 38. S. 34 & 35 Vict. c. 55. The form is: "to cause the said prisoner to be removed from the said prison to lunatic asylum, and the superintendent to receive and there detain the prisoner until further order."

(h) As to the warrants of the Secretary of State for War for billeting soldiers, see 44 & 45 Vict. c. 58, s. 104. The innkeeper is bound to receive the number in the route: *Sharrat v. Scotney*, 1892, 2 Q. B. 479.

(i) 1 Ch. Cr. Law, 339.

may verbally order its dispersal. One hour after the reading of the proclamation the justice may order the mob to be fired into or charged sword in hand; or before that time, where a felony has actually been committed or cannot otherwise be prevented. (*k*)

Warrants of
justices in
indictable
offences.

But the warrants which are addressed to constables for execution are principally those of justices of the peace out of sessions.

In all cases of treason, felony or other indictable offence, (*l*) the warrants issued fall within this category. (*m*)

(*k*) *R. v. Neale*, 9 C. & P. 431; *R. v. Pinney*, 5 ib. 254; *Keighly v. Bell*, 4 F. & F. 790. The law in S. is the same: Bell, p. 723.

(*l*) *Ravelins v. Ellis*, 16 M. & W. 172; and see *Conybeare v. School Board*, 63 L. T. 651.

(*m*) Warrants generally are granted under 11 & 12 Vict. c. 42, ss. 1-5, 9-16, 21, 24 and 25; 11 & 12 Vict. c. 43, ss. 2, 3, 7 and 19; and as regards the Metropolis, under 2 & 3 Vict. c. 71, ss. 19-25. As to 1. 14 & 15 Vict. cc. 92, 93. Indictable misdemeanours are:—

Abduction of girl under 16	24 & 25 Vict. c. 100, s. 55. S. common law.
Abettors in misdemeanour	24 & 25 Vict. c. 94, s. 8. S. 50 & 51 Vict. c. 35, s. 7.
Abortion, procuring drugs to cause	24 & 25 Vict. c. 100, s. 59. S. common law.
Admiralty, uttering false certificates } personating person entitled }	28 & 29 Vict. c. 124, s. 6. s. 8.
Adulteration, mixing injurious ingredients and selling	38 & 39 Vict. c. 63, s. 3, 2nd offence.
mixing drugs	s. 4, "
forging certificate or warranty	s. 27.
sale not of nature and quality	62 & 63 Vict. c. 51, s. 17, 3rd offence.
wilful misapplication of warranty false warranty or label	" " "
Agents, obtaining advances on property: fraudulent misappropriation } Aliens, false declaration }	24 & 25 Vict. c. 96, ss. 75, 78; 1 Ed. VII. c. 10, s. 1. S. common law.
Arms, training to use	33 & 34 Vict. c. 102, s. 2.
Assault, bodily injury	60 Geo. III. c. 1, s. 1.
attempted indecent	Common law. 24 & 25 Vict. c. 100, ss. 20, 62. S. common law.
on parish officer	13 & 14 Vict. c. 101, s. 9. S. common law. 1. 1 & 2 Vict. c. 56.
on county constable	1 & 2 Wm. IV. c. 41, s. 11.
promoting another to do so	2 & 3 Vict. c. 93, s. 8; 34 & 35 Vict. c. 112, s. 12.
on person arresting	14 & 15 Vict. c. 19, s. 12. S. common law.
Attempt to commit felony	Common law. S. 50 & 51 Vict. c. 35, s. 61.
Ballot Act—forging, fraudulently defacing or destroying or delivering to returning officer forged nomination or ballot paper; supplying without authority; fraudulently putting in or taking out papers; destroying, taking, or opening boxes or packets of papers; or infringing secrecy	35 & 36 Vict. c. 33, ss. 3, 4.
Bank shares, illegal contracts	30 Vict. c. 29, s. 1.
Bankrupt—fraudulent debtor	32 & 33 Vict. c. 62, ss. 11, 13, 14.
fraudulently obtaining credit } creditor making false claim }	46 & 47 Vict. c. 52, s. 31. S. 43 & 44 Vict. c. 34, ss. 13, 14. 1. 20 & 21 Vict. c. 60.
Betting, street	6 Ed. VII. c. 43, s. 1. 3rd offence.
Blasphemous libel	Common law.

These warrants are of three kinds, namely arrest, search and remand.

Bribery nt elections	Common law.
Carnal knowledge, attempt	
Chain, cables, etc., malicious injury	62 & 63 Vict. c. 23, ss. 13-16.
Challenge to fight	Common law.
Champerty	" " S. unknown.
Cheating by false weight	" " " "
Child under 2 abandoning, or under 16 } cruelty to	24 & 25 Vict. c. 100, s. 27. S. common law. 4 Ed. VII. c. 15, s. 1.
Church or meeting-house	1 Wm. & M. c. 18, s. 18; 5 & 6 Ed. VI. disturbing c. 4. S. unknown.
Clergyman, obstructing in the course of his duties	24 & 25 Vict. c. 100, s. 36.
Coin, selling medals resembling	46 & 47 Vict. c. 45, s. 2.
Combinations, unlawful, by parties } employed in supply of gas and water; } or involving injury or intimidation } or unlawful assembly	39 Geo. III. c. 79, s. 2; 38 & 39 Vict. c. 86, ss. 4-7. 57 Geo. III. c. 19, s. 25. I. 4 Geo. IV. c. 87.
Companies, false statements	8 Ed. VII. c. 69, s. 38.
Compounding felony	Common law. S. common law.
misdemeanour	" "
informations	18 Eliz. c. 5, s. 4; 56 Geo. III. c. 138, s. 2.
Concealing birth	24 & 25 Vict. c. 100, s. 60. S. 49, Geo. III. c. 14.
Conspiracies	Common law. I. 43 Geo. III. c. 86.
Constable, refusing to assist, when required	Common law.
superannuation frauds	53 & 54 Vict. c. 45, s. 9.
Copyright, false registration	5 & 6 Vict. c. 45, s. 12.
Corn returns	45 & 46 Vict. c. 37, s. 12.
Corporation frauds—expenditure ou } party elections; corruption	c. 50, s. 124; 52 & 53 Vict. c. 69, s. 2.
Corruption by or with agents	6 Ed. VII. c. 34, s. 1.
Dead body, disinterring	Common law. S. common law.
Declaration, making false	5 & 6 Will. IV. c. 62, s. 21.
Dentists	41 & 42 Vict. c. 33, s. 34.
Disobedience of order of justices, or direction under public general sta- tute with no penalty	Common law. S. contempt.
Disorderly house, keeping	25 Geo. II. c. 36, ss. 5-8. S. 55 & 56 Vict. c. 55, s. 403. 58 Geo. III. c. 70, s. 7. I. 7 Geo. IV. c. 9.
Drivers causing injury	24 & 25 Vict. c. 100, s. 35.
Election offences, making false answers or declarations; corrupt practices; illegal withdrawal of petition; em- ployees within six months voting; re- turning officer acting as agent	6 & 7 Vict. c. 18, ss. 81, 89. S. 19 & 20 Vict. c. 58. 28 & 29 Vict. c. 36, s. 11. I. 13 & 14 Vict. c. 69. 24 & 25 Vict. c. 53, s. 5; 46 & 47 Vict. c. 51, ss. 6, 33, 41.
municipal	30 & 31 Vict. c. 102, ss. 11, 50.
Entry, forcible	5 Ric. II. c. 8. 15 Ric. II. c. 2. 29 Geo. III. c. 46. 8 Hen. VI. c. 9. I. 5 & 6 Vict. c. 28. 21 Jac. I. c. 15.
Escape from custody and rescue	Common law. S. common law. I. 59 Geo. III. c. 92.
Explosives, making or having gun- powder with intent	24 & 25 Vict. c. 97, s. 54; c. 100, s. 64.
Extortion by colour of office	Common law. S. common law.
False imprisonment	" " S. 1701, c. 6.
False pretences, obtaining chattels, money, or security by inducing per- sons by fraud to execute instruments } Falsification of accounts	" " 24 & 25 Vict. c. 96, ss. 88-90. S. common law. 38 & 39 Vict. c. 24, s. 1; 6 Ed. VII. c. 55, s. 13. S. common law.
Felony, misprision of	Common law. S. common law.

Arrest.

Jurisdiction.

Arrest.—The warrant of arrest can be executed only within the jurisdiction of the magistrate who issues it, otherwise it must be

Foreign enlistment, leaving country for the purpose; embarking persons under false representations, taking illegally enlisted persons on board ship . . .	33 & 34 Vict. c. 90, ss. 4-7.
shipbuilding and expeditions , s. 8.
aiding equipment , ss. 10, 12.
Forgery, having possession illegally of exchequer bill paper or dies, or licenses . . .	24 & 25 Vict. c. 98, s. 11; 38 & 39 Vict. c. 17, s. 81; 50 & 51 Vict. c. 58, s. 32. S. common law.
Fraudulent trustees, selling or disposing of property . . .	24 & 25 Vict. c. 96, s. 77; 1 Ed. VII. c. 10, s. 1. S. common law.
Friendly societies, false declarations, or misappropriation . . .	59 & 60 Vict. c. 25, s. 87.
Game offences, taking or destroying by night, offender offering violence . . .	9 Geo. IV. c. 69, ss. 1, 2.
Gaming, cheating at play . . .	8 & 9 Vict. c. 109, s. 17. S. common law.
Gaming-house, keeping . . .	Common law; 16 & 17 Vict. c. 119, s. 3. S. 32 & 33 Vict. c. 87.
Housbreaking, being armed with intent at night . . .	24 & 25 Vict. c. 98, ss. 58, 59. S. common law.
Inciting to commit offence . . .	Common law. S. common law.
Indecent exposure . . .	" " 14 & 15 Vict. c. 100, s. 29. S. common law.
prints . . .	Common law. S. common law.
Industrial schools, refusing to conform to rules . . .	8 Ed. VII. c. 67, s. 71.
Infants, sending documents to, inciting to bet or borrow, or soliciting to make an affidavit in connection with a loan	55 & 56 Vict. c. 4, ss. 1, 2, 4.
Inland revenue, officer dealing in exciseable goods, or not keeping proper accounts . . .	53 & 54 Vict. c. 21, ss. 7, 14.
Jesuits . . .	10 Geo. IV. c. 7, s. 29. E.
Kidnapping . . .	Common law. S. common law.
King, firing at . . .	5 & 6 Vict. c. 51, s. 2.
Libel against King . . .	Common law. S. common law.
administration of justice . . .	" " " "
publishing against person or threatening, or to refrain from publishing to extort money; false or malicious libels . . .	6 & 7 Vict. c. 96, ss. 3-5.
Lodger, false declaration . . .	34 & 35 Vict. c. 79, s. 1.
Lotteries, keeping office for . . .	10 Will. III. c. 23, s. 2. S. Common law. 42 Geo. III. c. 119, s. 2.
Lunatics, offences against; second petition not stating facts of first; unlawful restraint; manager not communicating with commissioners as to doubtful patient; detention after expiration or revocation of license, or in building not shown on plans; neglect to send notices of admission; misstatements or false entries; omitting notice to coroner of death; obstructing commissioner or visitor; ill-treatment or neglect; abuse of female lunatic . . .	53 & 54 Vict. c. 5, ss. 7, 40, 197, 222, 231, 233, 237, 315-319, 321-324. S. 20 & 21 Vict. c. 71. I. 34 & 35 Vict. c. 22.
Maintenance . . .	Common law.
Manslaughter . . .	24 & 25 Vict. c. 100, s. 5.
Manufacturer, not paying in coin . . .	1 & 2 Will. IV. c. 27, s. 9. S. common law.
Medical practitioner, falsification of register or fraudulent registration . . .	21 & 22 Vict. c. 90, ss. 38, 39; 15 & 16 Vict. c. 56, ss. 15, 16; 31 & 32 Vict. c. 121, s. 14. I. 33 & 39 Vict. c. 57.

backed before execution by a magistrate in whose jurisdiction the execution is required to be made, (n) except that of a metropolitan

Merchandise marks, falsely applying trade mark or description, or making or selling die, or selling or offering goods so marked, or making false declaration as to watch-case . . .	50 & 51 Vict. c. 28, ss. 2, 8, 11.
Merchant shipping, sending unseaworthy ship to sea . . .	57 & 58 Vict. c. 60, s. 457.
Military law, neglect to obey, misconduct of civilian at court-martial, false oaths and personation, trafficking in commissions . . .	44 & 45 Vict. c. 58, ss. 11, 126, 142, 155.
Misuses, false declarations or certificate . . .	50 & 51 Vict. c. 58, s. 32.
Misconduct of officers . . .	Common law. S. common law.
Municipal corporations, misappropriation; forging seals or signatures . . .	45 & 46 Vict. c. 50, ss. 117, 235.
Music and dancing unlicensed . . .	25 Geo. II. c. 36, s. 2. E.
Nuisance on highway . . .	Common law. S. common law.
Oaths, making false . . .	5 & 6 Will. IV. c. 62, s. 21. S. common law. I. 50 Geo. III. c. 102.
Office, buying or selling, receiving money for or advertising . . .	5 Ed. VI. c. 16.
Official secrets, disclosing or inciting . . .	49 Geo. III. c. 126, ss. 3-6.
Perjury . . .	52 & 53 Vict. c. 52, ss. 1-3.
Poison, administering with intent . . .	Common law. I. 7 Geo. IV. c. 9.
Poor-officer promoting marriage of mother of bastard . . .	24 & 25 Vict. c. 100, s. 24.
injuring rate-book, or false evidence to assessment committee . . .	7 & 8 Vict. c. 101, s. 8. S. 8 & 9 Vict. c. 83. I. 1 & 2 Vict. c. 56.
Post office, opening or detaining letters, placing injurious substances in boxes or sending; diverting letters . . .	25 & 26 Vict. c. 103, s. 40; 26 & 27 Vict. c. 89, s. 4.
Pound, breach . . .	8 Ed. VII. c. 48, ss. 51, 61, 63.
Prize-fights . . .	Common law.
Public stores, unlawfully applying marks . . .	" "
Railway offences, misconduct of servants, obstructing trains, falsifying accounts . . .	38 & 39 Vict. c. 25, s. 4.
Real estate, false statement as to title . . .	3 & 4 Vict. c. 97, ss. 13, 14.
Reformatory schools, refusal to conform to rules . . .	24 & 25 Vict. c. 100, s. 34.
Registration, false declaration as to marriage, birth, or death . . .	31 & 32 Vict. c. 119, ss. 5, 28.
Rescue of persons charged with felony . . .	34 & 35 Vict. c. 78, s. 10.
of goods where breach of the peace . . .	25 & 26 Vict. c. 53, ss. 105, 138; c. 67, ss. 44, 45. S. 31 & 32 Vict. c. 101. I. 54 & 55 Vict. c. 66, s. 91.
Savings banks, using titles of . . .	8 Ed. VII. c. 67, s. 71.
Seamen, preventing ship loading, or offending against discipline . . .	6 & 7 Will. IV. c. 85, s. 38. S. 41 & 42 Vict. c. 43, s. 14.
Servants starving . . .	3 & 4 Vict. c. 72, s. 4.
Slaughter-houses, offences . . .	19 & 20 Vict. c. 119, s. 18; 37 & 38 Vict. c. 88, s. 40.
Smuggling . . .	1 & 2 Geo. IV. c. 88, s. 1. S. deforcement.
Spring-guns, setting . . .	Common law.
	26 & 27 Vict. c. 87, s. 5.
	33 Geo. III. c. 67, ss. 1, 3; 57 & 58 Vict. c. 60, s. 225.
	24 & 25 Vict. c. 100, s. 26. S. common law.
	26 Geo. III. c. 71, s. 9.
	7 & 8 Geo. IV. c. 53.
	39 & 40 Vict. c. 36.
	24 & 25 Vict. c. 100, s. 31. S. common law.

By whom
executed.

police magistrate. (o) Offences against the Coin, Explosives, Forgery, Larceny, Malicious Damage, Merchant Shipping, and Post Office Acts, are triable where the offender is found. (p) It may be executed without being backed, not only by apprehending the offender at any place in the district of the justice's jurisdiction, but also where there is fresh pursuit at any place in the next adjoining county or place, and within seven miles of the border of such district. And offences committed on a vehicle are triable in any place through which such vehicle passed. (q) If it be directed to all constables in the jurisdiction of the justice, it may be executed by any peace officer of any parish, township, hamlet, or place within such jurisdiction. (r) If it be directed to a particular officer, it must be executed by him. (s) It remains in force until executed. (t) [In Scotland no backing is necessary if the warrant be that of the sheriff and be executed by a messenger-at-arms or the sheriff's officer. (u) An indorsed warrant

Stamps, possession of dies, plates, etc.	54 & 55 Vict. c. 33, s. 15.
Suicide, attempt	Common law. S. common law.
Tampering with witness	" " " "
Telegraphs, disclosing or intercepting messages, or establishing wireless station, or installing or working ap- paratus unlicensed	31 & 32 Vict. c. 110, s. 20; 4 E.I. VII. c. 24, s. 1.
Trade unions, false copies of rules	34 & 35 Vict. c. 31, s. 18.
Trade-offences, directors, etc., falsifying books or making false statements	8 Ed. VII. c. 69, s. 281. 33 & 34 Vict. c. 61, s. 19.
Treasure-trove, selling	Common law. S. common law.
Unnatural crime	24 & 25 Vict. c. 100, ss. 61, 62.
Unwholesome food, offering for sale	Common law. S. common law.
Vaccination, false certificate	30 & 31 Vict. c. 84, s. 30; 34 & 35 Vict. c. 98, s. 7. S. 26 & 27 Vict. c. 108. 1. 42 & 43 Vict. c. 70.
Vendors fraudulently concealing deeds	22 & 23 Vict. c. 35, s. 24. S. common law.
Veterinary surgeons, false registration	44 & 45 Vict. c. 62, ss. 11, 12.
Wife, exposing for sale	Common law.
Witchcraft, pretending	9 Geo. II. c. 5, s. 4.
Women and girls, offences against, at- tempted indecent assault, girl under 12, procurement; or by threats, fraud, or drugs, attempted carnal knowledge girl under 13; defile- ment 13 to 16, or of idiot; house- holder permitting defilement 13 to 16; abduction under 18; detention in brothel; incest	24 & 25 Vict. c. 100, s. 52; 48 & 49 Vict. c. 69, ss. 2, 3-8; 8 Ed. VII. c. 45, ss. 1, 2.
Yeomanry, obtaining pay or pension by fraud	47 & 48 Vict. c. 55, s. 3.

(o) 2 & 3 Vict. c. 71, s. 17, and see 33 & 34 Vict. c. 52, s. 13.

(p) See *R. v. Peel*, 32 L. J. M. C. 65.

(q) 7 Geo. IV. c. 64, ss. 12 and 13; *R. v. French*, 8 Cox C. C. 252. As to venue S. 44 & 45 Vict. c. 33, s. 10; 50 & 51 Vict. c. 35, s. 22. 1. 9 Geo. IV. c. 54, ss. 26, 27.

(r) *R. v. Crompton*, 5 Q. B. D. 341.

(s) *Steph. Crim. Proc.*, Art. 104, and see *Gladwell v. Blake*, 1 C. M. & R. 636; *Lec v. Vessey*, 1 H. & N. 90; and *R. v. Patience*, 7 C. & P. 775.

(t) *Dickenson v. Brown*, Peake N. P. 307.

(u) 1 & 2 Vict. c. 119, s. 25.

may be executed either by the bearer or by any of those to whom it was originally directed, or by officers of the place of indorsation.] (x)

In all cases other than treason and felony (y) the officer is bound to have the warrant on him at the time of the arrest, otherwise the arrest will be illegal, resistance thereto will be lawful, (z) and the killing of the officer in order to prevent the arrest will be manslaughter only. (a)

When warrant must be in possession of officer.

[In Scotland, the import of the warrant must be communicated, and if outside his jurisdiction the officer must show it on demand but need not part with it.] (b)

Search.—A search warrant is confined to comparatively few cases, such as stolen property, (c) obscene books, (d) unwholesome food, (e) hops improperly marked, (f) merchandise marks, (g) forged instruments, (h) and under the criminal law amendment act. (i)

Search.

Where the property sought for is found on the premises searched, a warrant of apprehension seems to be involved in this warrant, so that the arrest (if any) would take place under the warrant, and not of the constable's own motion. (k) But if he seizes other property than that named, he will be liable to an action of trespass; (l) the property, however, need not be specified in the warrant, (m) and so also will he be if he stay an unreasonable time on the premises. (n)

When warrant of arrest implied.

Seizure to be limited to property named.

As to stolen property, it is laid down that a constable may, when duly authorised by any chief officer of police, search and seize and secure any property he may believe to have been stolen, in the same manner as he would be authorised to do if he had a

Stolen property.

(x) 11 & 12 Vict. c. 42, s. 15; 1. 14 & 15 Vict. c. 93, s. 30. The common form of this warrant is "forthwith to apprehend the said A. B., and to bring him before me or some other of His Majesty's justices of the peace in and for the said county."

(y) For a list of these offences see *post*, p. 48.

(z) *Codd v. Cole*, 1 Ex. D. 352; *Galliard v. Laxton*, 2 B. & S. 363.

(a) *R. v. Chapman*, 12 Cox C. C. 4.

(b) *Ante*, p. 8.

(c) 24 & 25 Vict. c. 96, s. 103.

(d) 20 & 21 Vict. c. 83, s. 1.

(e) 38 & 39 Vict. c. 55, s. 119; 52 & 53 Vict. c. 11, s. 4; and see 6 & 7 Will. IV. c. 37, s. 11.

(f) 29 & 30 Vict. c. 37, s. 10.

(g) 50 & 51 Vict. c. 28, s. 12.

(h) 24 & 25 Vict. c. 98, s. 46. *Porteous*,

5 Irv. 456.

(i) 48 & 49 Vict. c. 69, s. 10; and see 8 Ed. VII. c. 67, s. 24. In S. search warrants issue at common law. Bell. In I. the Lord-Lieutenant may in proclaimed districts issue general warrants to search for arms: 44 & 45 Vict. c. 5, s. 1; 50 & 51 Vict. c. 20, s. 8.

(k) *Wyatt v. White*, 29 L. J. Ex. 193.

(l) *Crozier v. Cundey*, 6 B. & C. 232.

(m) *Jones v. German*, 1897, 1 Q. B. 374.

(n) *Peppercorn v. Hoffman*, 9 M. & W. 628. The common form of this warrant is, "with such assistance as you may find necessary to enter into the said house and premises (and if necessary to use force for making such entry, whether by breaking open doors or otherwise), and there diligently to search for which may be therein."

Premises occupied by convicted persons.

search warrant, and the property seized (if any) corresponded with the property described in such search warrant. (1) When the premises to be searched are, or within the preceding twelve months have been, in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves; or (2) When the premises to be searched are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty, and punishable by penal servitude or imprisonment.

And it shall not be necessary for such chief officer of police, on giving such authority to specify any particular property, but he may give such authority if he has reason to believe generally that such premises are being made a receptacle for stolen goods. (o)

Remand.

Remand.—A warrant of remand is granted to detain a person charged in custody pending the further hearing of the case; and, in certain cases, the order may be verbal. (p)

Betting-house. Metropolis.

As regards the Metropolis, it is laid down that the commissioner (q) may issue an order in writing authorising a superintendent to enter any house, office, room or place within the metropolitan police district kept or used as a betting-house or office contrary to the Act, with such constables as shall be directed by the commissioner to accompany him, and, if necessary, to use force for the purpose of effecting such entry either by breaking open doors or otherwise. Having entered he may arrest all persons found therein, and seize all lists, cards, or other documents relating to racing or betting there found. (r)

What is a house, etc.

With regard to what is such a house, office, room or place, it

(o) Chief officer means in London the commissioner; elsewhere the chief constable, or other officer in command or any person authorised by him: 34 & 35 Vict. c. 112, ss. 16, 20.

(p) 11 & 12 Vict. c. 43, s. 20. S. 1701, c. 6. The common form, so far as the gaoler is concerned, is, "to receive the said A. B. into your custody in the said and there safely to keep him until day of when I hereby command you to have him at at o'clock before me or such other justice as may then be there."

(q) This officer is a justice: 10 Geo. IV. c. 44, s. 1. The form of the order is, "with such assistants as you may find necessary to enter into the said house, room or place and if necessary to use force for making such entry whether by

breaking open doors or otherwise and there diligently to search for all instruments of unlawful (betting or gaming) which may be therein and to arrest search and bring before some one of the magistrates sitting at as well the keepers of the same as also the persons there haunting resorting and playing to be dealt with according to law."

(r) 16 & 17 Vict. c. 119, s. 12. S. 37 Vict. c. 15; 55 & 56 Vict. c. 55, s. 407. The persons arrested need not be actually engaged in contravention of the Act: *Anderson v. Hume*, 46 J. P. 825; *Blake v. Beech*, 1 Ex. D. 320. But the betting must be on the premises: *Davis v. Stephenson*, 24 Q. B. D. 529; although the money need not be received there, nor even in the kingdom: *Stoddart v. Hawke*, 1902, 1 K. B. 353.

has been held, and may now be taken as settled, that any kind of inclosure, whether covered or not, with or without an erection, may come within the Act. (s) The word place is not, however, limited to those of the same nature as a betting-house or office (t) except in the case of inclosures on race-courses and other places devoted to sport. (u) The owner of an inclosure is not liable if he takes no part, (x) nor is a person betting there if he do not remain in a fixed place. (y) A table in Hyde Park (z) or a club where members bet with one another is not within the section, (a) nor is a room used for a sweepstake. (b)

A similar power is conferred on the commissioner in the case of a common gaming-house, and inasmuch as a betting-house is within the Gaming-House Act, the entry into a betting-house is usually effected by an order under this Act. (c)

The case of *Jenks v. Turpin* (d) contains a *résumé* of the statute and common law relating to gaming. A common gaming-house is "a house in which a large number of persons are invited habitually to congregate for the purpose of gaming. (e) In default of other evidence, it shall be sufficient to prove: (1) that such house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others; or (2) that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play or bet." (f) It is immaterial whether the bank is kept by the owner, occupier or keeper of the house, or by one of the players. A house is not less a common gaming-house because gaming therein is restricted to the members of a club who resort thereto. "To no gaming-house is the public at large invited to go without restriction of some sort or other. . . . If the admission of 500 persons does not make it a common gaming-house, it might equally be said that the admission of 5000 would not. The

Gaming-house.

Definition.

Evidence.

Club.

(s) *Shaw v. Morley*, L. R. 3 Ex. 137.
See *Bows v. Fenwick*, L. R. 9 C. P. 339;
Clark v. Hague, 2 E. & E. 281; *Coyne v. Brady*, 12 Ir. C. L. 577; *Brown v. Patch*, 1899, 1 Q. B. 892; *Belton v. Busby*, 1899, 2 Q. B. 380.

(t) *R. v. Humphrey*, 1898, 1 Q. B. 875.
(u) *Powell v. Kempton Park*, 1899, A. C. 143.

(x) *R. v. Cook*, 13 Q. B. D. 377.
(y) *Snow v. Hill*, 14 Q. B. D. 588, followed in *Whitehurst v. Fincher*, 17 Cox 70.

(z) *Doggett v. Catterns*, 10 C. B. N. S.

765.

(a) *Oldham v. Ramsden*, 44 L. J. C. P. 309; *R. v. Rogier*, 1 B. & C. 272; *R. v. Taylor*, 3 B. & C. 502.

(b) *R. v. Hobbs*, 79 L. T. 160.

(c) 8 & 9 Vict. c. 109, ss. 6 and 7; and see 2 & 3 Vict. c. 47, s. 48.

(d) 13 Q. B. D. 505.

(e) 13 Q. B. D. 516; *R. v. Davies*, 1897, 2 Q. B. 199.

(f) 8 & 9 Vict. c. 109, ss. 2, 5, 8. This Act does not apply to *S. Maffatt v. Stewart*, 14 R. 506; *Levy v. Jackson*, 5 F. 1170.

House not devoted to gaming. law does not require that it shall be a public gaming-house: a common gaming-house is that which is forbidden." (g) If the house be not exclusively devoted to gaming, that will not prevent it from coming under the description if such be the fact. The following games are unlawful: Ace of hearts, pharaoh (or faro), basset, hazard, passage, roulette, baccarat, baccarat chemin de fer, every game of dice except backgammon, and every game of cards which is not a game of mere skill, and any other game of mere chance.

Unlawful games.

CUSTOMS

The warrants to Customs officers are:—

Customs. Arrest. *Arrest*, which is granted by justices under 39 & 40 Vict. c. 36, s. 221, and may be executed without backing anywhere in the United Kingdom. (h)

Search. *Search*, which is either under a writ of assistance issuing from the High Court, or justice's warrant under sects. 204 and 205 of the same Act.

The writ of assistance apparently confers no further power than the justice's warrant; (i) and in an action of trespass thereunder, entry can only be justified by the event. (j)

Sea fisheries. The warrant of justices under the Sea Fisheries Act, 1888, to enter suspected places is executed by these officers. (k)

Foreign enlistment. And so also is the warrant of the Secretary of State to search a ship believed to be fitted out contrary to the provisions of the Foreign Enlistment Act, (l) and, if necessary, to detain her. (m)

Wreck. The receiver may under warrant search for and seize concealed wreck, and for this purpose may enter any house or other place, or any ship or boat. (n)

Detention. Merchant shipping. *Detention*.—Customs officers (or those of the Board of Trade) may by order of the detaining officer provisionally or finally detain a ship as unsafe. (o) The Act does not apply to load-

(g) 13 Q. B. D. 515.

(h) As to warrant of sheriff, see s. 252.

(i) *Per Kelly, arg.* in *R. v. Watts*, 1 B. & Ad. 172.

(j) *Per De Grey, C.J.*, in *Bostock v. Saunders*, 2 W. Bla. 912, upheld by Lord Mansfield in *Cooper v. Booth*, 3 Esp. 135, though the principal decision was overruled. *Bruce v. Rawlins*, 3 Wils. 61.

(k) 51 & 52 Vict. c. 54, s. 7.

(l) 33 & 34 Vict. c. 90, s. 25.

(m) S. 23, and see *R. v. Sandoral*, 16

Cox C. C. 206.

(n) 57 & 58 Vict. c. 60, s. 537.

(o) Ss. 459, 692; 60 & 61 Vict. c. 59. As to foreign ships, see s. 462; 6 Ed. VII. c. 48, ss. 2, 6; and *Larsen v. Hart*, 2 F. 54. The form is "that you will take the necessary steps for detaining her forthwith, taking care that the accompanying notification (Surveys, 85A) embodying a written statement of the grounds of the ship's detention is served at once."

line in the case of colonial or foreign ships under equally effective local laws; but as to foreign ships the exemption must be mutual. (*p*)

The question in these cases is whether the facts with regard to the ship as she lays in port which would have been apparent to a person of ordinary skill on examining her and inquiring about her would have given him reasonable and probable cause to suspect her safety. (*q*)

EXCISE

The warrants to these officers after adjudication are:—

Excise.

Levy and Commitment.—The sale under a levy warrant must take place between four and eight days after issue unless the penalties or sums are sooner paid or satisfied. (*r*) The officer is to deduct the penalty or sum for which such levy is made, and all reasonable charges and expenses attending such levy, and return the overplus to the proprietor of the goods, and such officer shall, if required, show the warrant to the person upon whose goods the levy shall be made, and suffer such person to take a copy thereof. (*s*)

Levy and commitment.

Without adjudication the warrants are—

Arrest, which is issued under 7 & 8 Geo. IV. c. 53, s. 90.

Arrest.

Search, which issues under sect. 34 of the same Act, and sect. 140 of 43 & 44 Vict. c. 24. The last may be executed in the night, provided it be in the presence of a constable. (*t*)

Search.

Distress.—If any duty payable by a brewer remain unpaid, the collector may by warrant empower any person to distrain all beer, malt or other materials for brewing, vessels and utensils belonging to the brewer, or in any premises in the use or possession of the brewer, or of any person on his behalf, or in trust for him, and to sell the same by public auction, giving six days previous notice of the sale, the proceeds to be applied towards payment of the costs and expenses of the distress and sale, and of payment of the duties due and the overplus, if any, to be paid to the brewer. Before the day of sale the brewer may remove

Distress.

(*p*) *Chalmers v. Scopenich*, 1892, 1 Q. B. 735.

(*q*) *Thompson v. Farrer*, 9 Q. B. D. 372. As to compensation where no reasonable cause for detention, see s. 460, and *Dixon v. Calcraft*, 1892, 1 Q. B. 458. And see

also as to detention, 6 Ed. VII. c. 58, s. 11.

(*r*) 7 & 8 Geo. IV. c. 53, s. 88.

(*s*) S. 89.

(*t*) As to S. 3 Geo. IV. c. 52, s. 113; I. 1 & 2 Will. IV. c. 55, s. 17; 17 & 18 Vict. c. 89, s. 2.

the whole or any part of the beer, malt or other materials distrained, on paying to the collector towards payment of the duty the true value of such beer, malt or other materials. (u) The procedure as to distillers is the same, except that permits for removal are on application, to be granted as if the distress had not been made. (y)

TAXES

Taxes.

Distress.

Warrants of the commissioners for levying distresses on non-payment of taxes and of commitment (z) of defaulters are executed by the collectors. By 43 & 44 Vict. c. 19, s. 86 (3), a levy or warrant to break open shall be executed by or under the direction and in the presence of the collector. (a)

Breaking.

By sub-sect. (2), the breaking must take place in the daytime.

(4) Every distress shall be kept for the space of five days at the costs and charges of the person so refusing to pay.

Appraisement.

(5) If the sum due be not then paid, the said distress shall be appraised by two or more of the inhabitants, or other sufficient persons, and there be sold by public auction by the said collector or his deputy for the payment of the said money, the overplus, if

Sale.

Overplus.

(u) 43 & 44 Vict. c. 20, s. 17.

(y) c. 24, s. 48. See also 7 & 8 Geo. IV. c. 53, s. 27. The form is "to distrain upon all the beer etc. and vessels and utensils belonging to the said or in any premises in the use or possession of the said or of any person on behalf or in trust for and to levy the said sum of so charged upon the said and remaining unpaid as aforesaid together with all the costs and expenses attending the distress. And I do hereby empower you to sell by public auction the said beer etc. or so much thereof as will be sufficient to levy the said sum of with all the costs and expenses attending the distress and to apply the proceeds of the sale in and towards payment of the costs and expenses of the distress and sale and in and towards payment of the said sum of so due from the said and to return the surplus if any to the said."

(z) The form of commitment, so far as concerns the gaoler, is "to receive him the said into your custody in the said prison there to be kept without bail until payment shall be made or security to our satisfaction given for the payment of the said sum of remaining due and unpaid as aforesaid and also of the

further sum of which we the said commissioners do adjudge to be reasonable for the costs and expenses of apprehending the said and conveying him to prison."

(a) See also as to land-tax 38 Geo. III. c. 5, ss. 17, 41, 42; and *Foss v. Racine*, 4 M. & W. 419. The form is "calling to your assistance a constable or other peace officer . . . and in the presence of the said constable etc. to demand entrance into the said house of and in case of resistance or neglect or refusal to open the same to break open in the daytime the said house and enter the same and to distrain therein the said goods and chattels and the distress there found to keep by the space of five days at the costs and charges of the said and if the whole of the said sum of together with the said costs and charges be not paid within the said five days then the said distress having been first duly valued and appraised by two inhabitants of the said or other sufficient persons be sold by you and the overplus if any of moneys arising by such sale after paying and deducting the said sum of and the costs and charges of taking keeping and selling the said distress be restored to the owner thereof."

any, after deducting the said money, and also the costs and charges of taking, keeping, and selling the said distress, to be restored to the owner. (b)

The amount assessed must be paid unless the plaintiff appeals. (c)

By sect. 88 (1) of the same Act no goods are to be taken in execution except at the suit of the landlord for rent, unless arrears of taxes are first discharged. Landlord.

A bill of sale is no protection in respect of chattels which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes, and poor and other parochial rates. (d) Bill of sale.

This section only applies to proceedings under distress warrant. (e)

By 57 Geo. III. c. 93, s. 1, and 7 & 8 Geo. IV. c. 17, distresses for taxes under £20 are not to be charged for otherwise than as in the schedule to the first Act. (f) Charges.

One warrant for several duties is sufficient. (g)

[In Scotland warrants to recover duties or land tax are executed by constables or sheriff's officers. The goods pounded or distrained are to be kept on the ground or at the house where seized or in such other place near, of which the owner shall have notice, as the officer shall think fit, for five days in the officer's custody unless sooner redeemed plus the costs by the owner. ex-Scotland.]

After five days the goods are to be valued by two persons and sold at not a less price than the value by the officer pounding. The value to be applied in payment of the said duties and tax and 10 per cent. to the officer unless redeemed by the owner within five days after valuation. The surplus, if any, to go to the owner.

If no purchaser, the goods to be deposited with the sheriff, and if not redeemed within five days to be sold at his discretion, he paying the duties and tax and expenses, and retaining 5 per cent. for himself.

Expenses of preserving goods or maintaining cattle may also be charged. (h)]

(b) The powers conferred by 33 Geo. III. c. 55, may be employed under this Act. These powers are contained in sect. 3, which was repealed by 11 & 12 Vict. c. 43, s. 36, but which it is presumed is revived by this sub-section. In the event of no sufficient distress being found in the district, it authorises a justice of a foreign jurisdiction to back the warrant in order that distress may be levied there.

(c) *Simpkin v. Robinson*, 45 L. T. 221, and see *Allen v. Sharp*, 2 Ex. 352; but see *Att.-Gen. v. McCornack*, 1903, 2 I. R. 520.

(d) 45 & 46 Vict. c. 43, s. 14. I. 46 & 47 Vict. c. 7. Not applicable to S.

(e) *Wimbledon v. Underwood*, 1892, 1 Q. B. 836.

(f) See post, p. 672.

(g) *Patchett v. Baneroff*, 7 T. R. 367.

(h) 43 & 44 Vict. c. 19, s. 97.

- Ireland. In Ireland income tax may be recovered by distress from the person assessed or from the occupier of the property, or may be levied on all goods and chattels found thereon. The tax under Schedule A may be recovered from the landlord or immediate lessor either as rent is recoverable (*i*) or as poor rate. (*k*)
- Commitment. As to the warrant of commitment the power of the commissioners is to commit a defaulter until payment of the sum due together with the costs and expenses of apprehension and conveyance to gaol. (*l*)

THE GAOLER

- Gaoler. The warrants of commitment above-mentioned are also addressed to this officer. (*m*)
- Sureties for peace not finding. For not entering into recognisances or finding sureties to keep the peace, the imprisonment is not to exceed twelve months, (*n*) and for non-payment of a penalty under the Customs Act six months. (*o*)
- Customs.
- First-class misdemeanants. Prisoners committed for contempt of Court are to be treated as first-class misdemeanants. (*p*)
- Warrants to bring up prisoner. The warrant of the Secretary of State and of the County Court (*q*), and the order of the Court to bring up a prisoner for trial (*r*) go to this office. The two first-mentioned are made of equal force with a *habeas corpus*. (*s*)
- The Secretary of State may issue a warrant to remove an insane prisoner to an asylum, (*t*) and a justice to remove a prisoner to a reformatory school. (*u*)
- Discharge. As to the discharge of prisoners, see *ante*. (*x*)

(*i*) 1 & 2 Vict. c. 56, s. 78.

(*k*) 6 & 7 Vict. c. 92, s. 2; 16 & 17 Vict. c. 34, s. 17.

(*l*) 43 & 44 Vict. c. 19, ss. 22 and 89. As to I. sec s. 96.

(*m*) S. 1701, c. 6; 11 Geo. IV. c. 37, s. 6. As to whipping, sec 24 & 25 Vict. c. 96, s. 119; c. 97, s. 75; c. 100, s. 70; 26 & 27 Vict. c. 44, s. 1. Women are exempt: 1 Geo. IV. c. 57. S. 23 & 24 Vict. c. 105, s. 74. I. 14 & 15 Vict. c. 92, s. 6.

(*n*) 16 & 17 Vict. c. 30, s. 3; 61 & 62 Vict. c. 41, s. 6. S. six months by sheriff, fourteen days by justice: 45 & 46 Vict. c. 42, s. 6.

(*o*) 39 & 40 Vict. c. 36, s. 236; and see s. 253. As to penalty S., see 9 Geo. IV. c. 29, s. 21. See also 46 & 47 Vict. c. 55, s. 4.

(*p*) *Ante*, p. 15.

(*q*) 61 & 62 Vict. c. 41, s. 11, and 51 & 52 Vict. c. 43, s. 112.

(*r*) 30 & 31 Vict. c. 35, s. 10. See s. 7 as to conveyance to hear deposition.

(*s*) See *ante*, p. 16.

(*t*) 47 & 48 Vict. c. 64, ss. 2-5. S. 25 & 26 Vict. c. 54, s. 23.

(*u*) 8 Ed. VII. c. 67, s. 57. See also ss. 21, 25, 46, 69.

(*x*) P. 15; and as to discharge under the Taxes Acts, 43 & 44 Vict. c. 19, s. 9.

2. INHERENT POWERS

INHERENT powers are properly those which are derived from the common law, but as a considerable number of other similar powers have been from time to time conferred by statute, it should be premised here that, where a power is so conferred, it must be pursued strictly, or it will afford no justification in the event of action arising on account of its exercise. This principle will be found laid down in the case of *Warne v. Varley*. (a) There searchers of leather had been appointed under statute, who were authorised to seize leather insufficiently dried, in order to carry it before officers called triers. It was held that this authority did not extend to the seizure of any leather which was sufficiently dried, though *in their judgment* it was not so, and that such a seizure having taken place, they were liable to an action of trespass. But, although this is the general principle, it must be read in conjunction with the statutory protection of officers when acting or neglecting to act *bonâ fide*, in the belief that they were discharging their duty, and which will be found discussed *infra*. (b)

Inherent powers.

To be pursued strictly.

Qualification.

OFFICERS ATTENDING COURTS

In the case of all officers attending Courts, it is obvious that, whether the Court be the High Court of Parliament or a petty sessions, the object of their attendance is to secure order and decorum during the sittings thereof. It is presumed, therefore, that it follows that they have in their own persons power to take such steps as may be reasonably necessary to secure the maintenance of such order and decorum without any specific instructions for that purpose; and that to this end they may remove any persons who make a disturbance, or prevent from entering those who are in an improper state. (c) In cases involving charges of indecency, women have usually been denied

Officers attending Courts.

To preserve decorum.

Cases of indecency.

(a) 6 T. R. 443, and see *Grindley v. Barker*, 1 B. & P. 229.

(b) Page 637.

(c) May, *Parl. Prac.*, 10th ed., p. 69.

admittance; but it seems they are entitled to be present if they think fit (*d*).

SHERIFF

Sheriff.

When a jury has been empanelled, they are strictly in the custody of the sheriff until their verdict be given. In practice, however, this rule is relaxed, except on the trial of persons for serious crimes. Where they are detained, a bailiff is sworn to keep them together, and not to suffer any to speak to them. (*e*)

HIGH BAILIFF

High bailiff.

If any County Court officer or bailiff shall be assaulted while in execution of his duty, or if any rescue shall be made or attempted of any goods levied under process of the Court, the officer may apprehend the offender and bring him before the judge. (*f*) An officer who has left for refreshment and is assaulted on his return is within the section. (*g*)

CONSTABLES

Constables.

Duty.

Use of force.

The duty of the constables is to preserve the peace, (*h*) and where any serious offence against the law is committed, to seize the offender and bring him before a justice. (*i*) If resisted in the execution of duty, they may repel force by force, provided it is proportioned to the injury it is intended to prevent. (*k*)

Aiding other officers.

In a number of cases these officers are required to lend their assistance to other officers, either to effectuate the execution of some warrant or some power which such other officer has in his own person. In such cases, it has been held, the constable is in the execution of his duty; (*l*) but if he act purely ministerially,

(*d*) By 8 Ed. VII. c. 67 (Children Act, 1908), s. 111, provision is to be made for preventing children and young persons being conveyed to or from a juvenile court, or in waiting from associating with persons charged, unless jointly charged. The court is not to be open to persons not directly concerned, other than reporters, except by leave. By sect. 114 power is given to clear any court while a child or young person is giving evidence in relation to an offence or conduct against decency or morality; and by sect. 115 children are not to be present during the trial of offences unless charged or required as witnesses—not to apply to messengers, clerks, etc., attending in connection with their

employment.

(*e*) Hale P. C. II., p. 296. S. see 50 & 51 Vict. c. 35, s. 55; 60 & 61 Vict. c. 18.

(*f*) 51 & 52 Vict. c. 43, s. 48. See *Lewis v. Owen*, 1894, 1 Q. B. 102. I. see 27 & 28 Vict. c. 99, s. 26.

(*g*) *Coffin v. Dyke*, 48 J. P. 757.

(*h*) See *Coyne v. Tweedy*, 1898, 2 I. R. 167. Interest frequently conflicts with duty. The rule of the Chancery Division is to be here borne in mind. It goes to the question of the extent of credibility.

(*i*) See *Macdonald v. Lyon*, 1 Stuart 129.

(*k*) 1 East P. C. 297. S. same.

(*l*) *R. v. Clarke*, 3 A. & E. 287.

and is not guilty of any excess, he is not liable while so acting; (*m*) and if protection be afforded to these other officers, he is usually entitled to share it. (*n*)

These officers may be required to aid in the execution of warrants of this class at any time, unless the time be limited by statute. (*o*)

Three classes of persons, *viz.*, infants, lunatics and married women, are under certain circumstances excused from the consequences of criminal acts; but this is a matter for the judge or magistrate, and would not generally affect the duty of a constable to act in such cases. (*p*)

Infants, lunatics, married women.

Arrest.—The inherent power of a constable to arrest in these cases is confined to treason, felony or reasonable suspicion thereof, and those indictable misdemeanours which are specially provided for by statute, and detailed below. (*q*)

With regard to the time of arrest, it appears that on a criminal charge it may take place at any time of the day or night; (*r*) and in cases of treason or felony, on Sunday also. (*s*)

As to breaking doors, it seems that that can take place only in two cases: 1. In an affray which occurs in his view, he may pursue the affrayers, and if they fly to a house into which he is not permitted to enter, he may in the immediate pursuit break the doors to apprehend them. (*t*) Or if there be an affray in a house, and the doors be shut, whereby there is likely to be manslaughter or bloodshed committed. (*u*) 2. If a felony be committed, and there be reasonable ground of suspicion (*w*) that the felon was in the house, (*x*) or if a felony will probably be committed unless he interfere, and there are no other means of entering, (*y*) he may in immediate pursuit (*z*) break the door.

Breaking doors.

In all other cases a warrant is apparently necessary. (*a*)

A constable cannot justify handcuffing a prisoner unless he

Handcuffs.

(*m*) Cf. *Flewster v. Royle*, and *Glynn v. Houston*, *etc.*, *post*, p. 403.

(*n*) See *post*, p. 635.

(*o*) *Miller v. Knox*, 6 Sc. 1.

(*p*) See on this, 1 Hale 25–28, 44, 434, 516; *R. v. Hodges*, 8 C. & P. 195; *R. v. Cruise*, *ib.* 541.

(*q*) A person cannot be arrested on suspicion of having committed a misdemeanour: *Matthews v. Biddulph*, 4 Sc. N. R. 54; *Bowditch v. Balchin*, 5 Ex. 378; *McVie*, 2 Irv. 429; nor for perjury, without a warrant. *Somerville v. Sutherland*, 2 F. 185.

(*r*) Greenwood, *Magist. Guide*, 3rd ed., p. 129.

(*s*) 29 Car. 2, c. 7, s. 6. As to escape, see *Moore*, 2 Ld. Ray, 1028; *Maitland*, 24 D. 193; 1. 7 Will. III. c. 17, s. 7.

(*t*) 2 Hawk. P. C., c. 14, s. 8; *Meldrum*, Kilk. 304.

(*u*) 2 Hale P. C. 95; *Smith v. Shirley*, 3 C. B. 142.

(*w*) See *post*, p. 48; and 2 Hawk. P. C., c. 14, s. 7.

(*x*) 2 Hale P. C. 95.

(*y*) Greenwood, p. 209.

(*z*) See *R. v. Marsden*, *infra*.

(*a*) 2 Hale P. C. 95. *S. Hume*, ii. 76, and the breaking there applies to any house or place within.

has attempted to escape, or it be necessary in order to prevent his doing so. (b)

[It is oppressive where the accused is not taken red-handed or *in flagrante delicto*, and where he is a man well-known to the authorities, to apprehend him without first serving him with a copy of the complaint.] (c)

Stating cause
of arrest.

Where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told, and the arrest will be legal, and resistance illegal, as if he had been told. (d)

Jurisdiction.

There is no limitation as to the time in which justices can entertain a charge of this class, unless it be imposed by statute.

A constable has no authority at common law to act out of his vill. (e) But a police authority may now enter into an agreement with another authority to aid such other authority either generally or for any particular time. And under such an agreement the constables of the aiding force are deemed to have all powers and privileges of the aided force. (f)

In felonies, and under the Coin, Larceny and Night Offenders Acts, (g) any person may arrest, which words include, of course, a constable out of his jurisdiction. In such case he would not be acting in execution of his duty, and could not therefore claim the privileges accorded to a constable when so acting.

Authority to arrest is confined to the following cases:—

Affray.

Where there is an affray, *i.e.*, the fighting of two or more persons in some public place to the terror of His Majesty's subjects. (h) No quarrelsome or threatening words are sufficient; (i) but there need be no actual violence; as where persons arm themselves with dangerous and unusual weapons. (k) Here the constable may arrest and carry the affrayers before a justice, or detain them till their heat be over. But it is essential that the party should have been engaged in the affray, and that the constable should have had view of the affray while the party was so engaged in it, and that the affray was still continuing at the time of apprehension. (l) If they fly into a house he may in the immediate pursuit break in to apprehend them. (m)

(b) *Wright v. Court*, 4 B. & C. 596.

(c) *Per* Ld. Trayner, *Carlin v. Malloch*, 23 R. 43.

(d) *R. v. Howarth*, 1 Moo. C. C. 207.

(e) 1 Hale P. C. 459, and see *Gladwell v. Blake*, 1 C. M. & R. 636; *Leask*, 21 R. 32. See 7 & 8 Geo. IV, c. 53, s. 37, *post*.

(f) 53 & 54 Vict. c. 45, s. 25. Not ap-

plicable to City of London or to S. or I.

(g) See these statutes cited, *infra*.

(h) 1 Hawk. P. C., c. 63, s. 13. This is properly a breach of the king's peace.

(i) *Ibid.*, s. 3.

(k) Sects. 2, 4.

(l) *Cook v. Nethercote*, 6 C. & P. 741.

(m) 2 Hawk. P. C., c. 14, s. 8.

To justify an arrest for an assault and battery in a constable's view, it must be such as would justify a criminal charge. ^{Assault and battery.} (n) Where a man in the presence of a constable raised a shovel as if to strike his wife, swearing that he would have murdered her were it not for the presence of the constable, and afterwards for about twenty minutes continued to use violent language towards his wife, and then left his house professing an intention of going to his father's to sleep; and after he had gone a few yards the constable arrested him, he was held justified in doing so. (o) But where upon an assault on a constable in the execution of his duty, a delay of over an hour occurred, when the house of the prisoner was forced and he was arrested therein, the arrest was held illegal. (p) And so also is one on the charge of another constable which is not well founded. (q) A prize-fight is an assault, and this has been held to be such a fighting, whether with gloves or not, that injury to one of the combatants is likely to ensue; (r) all persons aiding and abetting therein are guilty of assault, but the mere presence of a person is not conclusive of aiding or abetting. (s) A battery includes beating and wounding. To beat means not merely to strike forcibly with the hand, or a stick, or the like, but includes every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent, or hostile manner, (t) as, *e.g.*, thrusting or pushing him in anger, (u) holding him by the arm, spitting in his face, jostling him out of the way, (x) pushing another against him, (y) throwing a squib at him, (z) striking a horse on which he is riding by which he is thrown. (a) If one strike at another and miss him it is an assault only. A wounding is where the violence is so great as to draw blood. (b) No battery can occur by mere misadventure, (c) nor where a parent moderately corrects his child, (d) or a master his servant or scholar, (e) or if the defendant committed it merely in his own defence, (f)

(n) *Coward v. Baddeley*, 4 H. & N. 481. As to assault on officers, see 34 & 35 Vict. c. 112, s. 12; 48 & 49 Vict. c. 75, s. 2; 57 & 58 Vict. c. 57, s. 43. *O'Brien*, 8 R. 8; *Fowler v. Hodge*, 24 R. 17; cf. *Bastable v. Little*, 1907, 1 K. B. 59.

(o) *R. v. Light*, 27 L. J. M. C. 1.

(p) *R. v. Marsden*, L. R. 1 C. C. 131.

(q) *Griffin v. Coleman*, 4 H. & N. 265.

(r) *R. v. Orton*, 14 Cox C. C. 226; *R. v. Young*, 10 B. 371.

(s) *R. v. Coney*, 8 Q. B. D. 534.

(t) 1 Hawk. c. 62, s. 2; *Rawlings v. Till*, 3 M. & W. 28.

(u) *Per Holt, C.J., Cole v. Turner*, 6

Mod. 149.

(x) *R. v. Cotesworth*, *ib.* 172.

(y) *Bull*, N. P. 16.

(z) *Scott v. Shepherd*, 2 W. Bl. 892.

(a) *Dodwell v. Burford*, 1 Mod. 24.

(b) *Post*, p. 68.

(c) *Gibson v. Pepper*, 2 Salk. 637; *R. v. Gill*, 1 Str. 190.

(d) *Com. Dig.* Pl. 3 M. 19; 1 Hawk. c. 60, s. 23.

(e) See *Gardner v. Bygrave*, 6 T. L. R. 23; *Mansell v. Griffin*, 1908, 1 K. B. 160; *Muckarsie*, 11 D. 4.

(f) 1 Sid. 246; 1 Rol. Rep. 19.

or in defence of a husband, wife, child, parent, master, or servant. (g)

Assembly un-
lawful.

Any meeting whatever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the king's subjects, seems properly to be called an unlawful assembly, as where great numbers, complaining of a common grievance, meet together armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests, for no man can foresee what may be the event of such an assembly. (h) Illegal drilling constitutes an unlawful assembly, (i) and so also would it appear to be where parties assemble together to obstruct the officers of the law, (k) or to witness a prize fight. (l) Any assembling together in thoroughfares for the purpose of peaceably passing along is lawful. But there is apparently no common law right of stationary meeting in any thoroughfare or public place. (m) A lawful assembly may become unlawful if during its course seditious words are spoken of such a nature as to produce a breach of the peace. (n) Where persons assembled with others for a lawful purpose, and with no intention of carrying it out unlawfully, but with the knowledge that their assembly would be opposed, and with good reason to suppose that a breach of the peace would be committed by those who opposed it, they could not be convicted of an unlawful assembly. (o) But where they assemble in pursuit of an object lawful in itself and in the carrying out of such object do something which may lead to a breach of the peace or is calculated to lead others to believe that a breach of the peace will be committed, it is a question whether it is an unlawful assembly or not. (p) The local authority responsible for the maintenance of order may, in their discretion, issue notices warning persons not to attend a meeting, but a meeting held there subsequently is not an unlawful

(g) 2 Rol. Abr. 546 d.; 1 Hawk. c. 60, ss. 23, 24.

(h) 1 Hawk. P. C. c. 65, s. 9; *R. v. Vincent*, 9 C. & P. 91; *R. v. Hunt*, 3 B. & Ald. 566. Where the assembly is for an unlawful purpose there need be no tumult. As to proclaimed districts I. see 50 & 51 Vict. c. 20, s. 7.

(i) 60 Geo. III. c. 1, s. 2; and see 44 & 45 Vict. c. 5, s. 1 as to illegal possession of arms I.; and also 1 & 2 W. IV. c. 44, and 5 & 6 Vict. c. 28.

(k) *Per Fitzgerald, J., R. v. McNaughten*, 14 Cox C. C. 576.

(l) *R. v. Billingham*, 2 C. & P. 234;

R. v. Perkins, 4 ib. 537.

(m) *R. v. Graham*, 16 Cox 420. Cf. *De Morgan v. Metropolitan Board of Works*, 49 L. J. M. C. 51, and *Homer v. Cadman*, 34 W. R. 413. As to Trafalgar Square, see *Ex parte Lewis*, 21 Q. B. D. 191.

(n) *R. v. Burns*, 16 C. C. C. 355.

(o) *Beatty v. Gillbanks*, 9 Q. B. D. 308, and see *Beatty v. Glenister*, 51 L. T. 304, and *contra O'Kelly v. Harvey*, 14 L. R. Ir. 105; *Wise v. Dunning*, 1902, 1 K. B. 167.

(p) *R. v. Clarkson*, 66 L. T. 297; see *Coyne v. Tweedy*, 1898, 2 I. R. 167.

assembly by reason only of the existence of such a notice. (*g*) Any one who reads it however is aware of the character of the meeting and thus affected with responsibility for attending it. (*r*) An assembly being unlawful may be dispersed. (*s*)

A person about to expose an infant whereby its life may be endangered may be arrested. (*t*) Child exposure.

Where any person is convicted on indictment of a crime, (*u*) and a previous conviction of a crime is proved against him, he shall at any time within seven years immediately after the expiration of the sentence passed on him for the last of such crimes be liable : Convicted persons.

If charged with getting his livelihood by dishonest means if the arrest is authorised by the chief officer of police of the district. (*x*)

And without warrant—If found in any place whether public or private under such circumstances as to satisfy the court . . . that he was about to commit or aid in the commission of any offence punishable on indictment or summary conviction or was waiting for an opportunity . . . to do so or

If found in or upon any dwelling-house or any building yard or premises being parcel or attached to such dwelling-house or in or upon any shop warehouse counting-house or other place of business or in any garden orchard pleasure-ground or nursery-ground or in any building or erection in any garden etc. without being able satisfactorily to account for the same. (*y*)

Any holder of a licence under the Penal Servitude Acts or any person under the supervision of the police in pursuance of the above-mentioned Act whom the constable reasonably suspects of having committed any offence is also liable. (*z*)

Any person (*a*.) who within view of any constable commits any offence under the Cruelty to Children Act, 1904, where the name and residence of such person are unknown and cannot be ascertained. (*a*) Cruelty to children.

The offences under this Act are—

If any person (*b*.) causes or procures any child, being a boy under the age of 14 years or being a girl under the age of 16 years, or having the custody charge Restrictions on employment.

(*g*) *R. v. Graham, ubi sup.*

(*r*) *R. v. Fursey*, 6 C. & P. 81. *Deakin v. Milne*, 10 R. 22.

(*s*) *R. v. Neale*, 9 C. & P. 431. Soldiers employed in suppressing such an assembly have the same powers, and are under the same liabilities as constables: *R. v. Pinney*, 5 ib. 254; *Redford v. Birley*, 3 Stark 76; *R. v. Kennett*, 5 C. & P. 282.

(*t*) Arch. J. P. 122. *Gibson*, 2 Broun 396.

(*u*) That is, in E. & I. any felony, or uttering false or counterfeit coin, or possessing counterfeit gold or silver coin, or obtaining goods or money by false pretences or conspiracy to defraud, or any misdemeanour under sect. 58 of the Larceny Act, 1861 (see p. 76), and in S. any of the pleas of the crown, any theft which is respect of any aggravation or of the amount in value of the money, goods, or thing

stolen, may be punished with penal servitude, any forgery and any uttering of any forged writing, falsehood, fraud, and wilful imposition, uttering base coin or the possession of such coin with intent to utter the same—34 & 35 Vict. c. 112, s. 20. *Martin*, 1908, S. C. 52.

(*x*) *Ib.*

(*y*) 34 & 35 Vict. c. 112, s. 7; see also 54 & 55 Vict. c. 69, s. 6.

(*z*) *Ib.* s. 2; see also 34 & 35 Vict. c. 112, s. 3.

(*a*) 4 Ed. VII. c. 15, s. 4 (8 Ed. VII. c. 67, 3rd sched.). By s. 23 any person who is the parent of a child shall be presumed to have the custody: any person to whose charge a child is committed by its parent shall be presumed to have charge, and any other person having actual possession or control shall be presumed to have the care thereof.

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or care of any such child allows that child to be in any street or in any premises licensed for the sale of any intoxicating liquor other than premises licensed for public entertainments for the purpose of singing playing or performing or being exhibited for profit or offering anything for sale between 9 p.m. and 6 a.m., or

(c.) Causes or procures any child under the age of 11 or having the custody etc. allows that child to be at any time in any street or in any premises licensed for the sale of intoxicating liquor or for public entertainments or in any circus or other place of public amusement to which the public are admitted by payment for the purpose of singing playing or performing or being exhibited for profit or offering anything for sale or

(d.) Causes or procures any child under 16 or having the custody etc. allows that child to be in any place for the purpose of being trained as an acrobat contortionist or circus performer or of being trained for any exhibition or performance which in its nature is dangerous

Provided that: (i) This section shall not apply in the case of any occasional sale or entertainment the net proceeds of which are wholly applied for the benefit of any school or to any charitable object, if such sale or entertainment is held elsewhere than in premises licensed for the sale of any intoxicating liquor but not for public entertainments or if in the case of a sale or entertainment held in any such premises a special exemption from the provisions of this section has been granted in writing under the hands of two justices and

(ii) Any local authority may, if they think it necessary or desirable from time to time by bye-law extend or restrict the hours mentioned in para. (b.) of this section either on every day or on any specified day or days of the week and either as to the whole of their district or as to any specified area therein and

(iii) Paras. (c.) and (d.) shall not apply in any case in respect of which a licensee granted under this Act is in force so far as the same extends. (b)

By 8 Ed. VII. c. 67 (Children Act, 1908), Part II.

Punishment
for cruelty to
children and
young persons.

S. 12.—(1) If any person over the age of sixteen years, who has the custody, charge, or care of any child or young person, wilfully assaults, ill-treats, neglects, abandons, or exposes such child or young person, or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanor, . . . and for the purposes of this section a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing, medical aid, or lodging for the child or young person, or if, being unable otherwise to provide such food, clothing, medical aid, or lodging, he fails to take steps to procure the same to be provided under the Acts relating to the relief of the poor.

(8) An offence under this section is in this Part of this Act referred to as an offence of cruelty.

Suffocation of
infants.

13. Where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air-passages of the infant) whilst the infant was in bed with some other person over sixteen years of age, and that that other person was at the time of going to bed under the influence of drink, that other

(b) S. 2.

person shall be deemed to have neglected the infant in a manner likely to cause injury to its health within the meaning of this Part of this Act.

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15. If any person over the age of sixteen years who has the custody charge or care of any child under the age of seven years allows that child to be in any room containing an open fire grate not sufficiently protected to guard against the risk of the child being burnt or scalded, without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury, [penalty]

Exposing children to risk of burning.

16.—(1) If any person having the custody, charge, or care of a child or young person between the ages of four and sixteen allows that child or young person to reside in or to frequent a brothel, he shall be guilty of a misdemeanor.

Allowing children or young persons to be in brothels.

17.—(1) If any person having the custody, charge, or care of a girl under the age of sixteen years causes or encourages the seduction or prostitution of that girl, he shall be guilty of a misdemeanor.

Punishment of person causing, encouraging, or favouring seduction or prostitution of young girl.

(2) For the purposes of this section a person shall be deemed to have caused or encouraged the seduction or prostitution (as the case may be) of a girl who has been seduced or become a prostitute if he has knowingly allowed the girl to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

19.—(1) Any constable may take into custody, without warrant, any person—

(a.) who within view of the constable commits an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, where the name and residence of such person are unknown to the constable and cannot be ascertained by the constable; or

(b.) who has committed, or who the constable has reason to believe has committed, an offence of cruelty or any of the offences mentioned in the First Schedule to this Act, if he has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable.

Power to take offenders into custody.

20.—(1) A constable, or any person authorised by a justice, may take to a place of safety any child or young person in respect of whom an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, has been, or there is reason to believe has been, committed.

Detention of child or young person in place of safety.

(2) A child or young person so taken to a place of safety, and also any child or young person who seeks refuge in a place of safety, may there be detained until he can be brought before a court of summary jurisdiction.

38.—(1) In this Part of this Act, unless the context otherwise requires, the expression “fit person,” in relation to the care of any child or young person, includes any society or body corporate established for the reception or protection of poor children or the prevention of cruelty to children.

Interpretation.

(2) For the purpose of this Part of this Act—

Any person who is the parent or legal guardian of a child or young person or who is legally liable to maintain a child or young person shall be presumed to have the custody of the child or young person, and as between father and mother the father shall not be deemed to have ceased to have the custody of the child or young person by reason only that he has deserted, or otherwise does not reside with, the mother and child or young person; and

Any person to whose charge a child or young person is committed by any person who has the custody of the child or young person shall be presumed to have charge of the child or young person; and

Any other person having actual possession or control of a child or

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young person shall be presumed to have the care of the child or young person.

(3) This Part of this Act shall apply in the case of a child or young person who has before the commencement of this Act been committed to the care of a relative or other fit person by an order made under the Prevention of Cruelty to Children Act, 1904, as if the order had been made under this Part of this Act.

Children liable to be sent to industrial schools.

Part IV., Sec. 58.—(1) Any person may bring before a petty sessional court any person apparently under the age of fourteen years who—

- (a.) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise), or being in any street premises or place for the purpose of so begging or receiving alms; or
- (b.) is found wandering and not having any home or settled place of abode, or visible means of subsistence, or is found wandering and having no parent or guardian, or a parent or guardian who does not exercise proper guardianship; or
- (c.) is found destitute, not being an orphan and having both parents or his surviving parent, or in the case of an illegitimate child his mother, undergoing penal servitude or imprisonment; or
- (d.) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; or
- (e.) is the daughter, whether legitimate or illegitimate, of a father who has been convicted of an offence under section four or section five of the Criminal Law Amendment Act, 1885, in respect of any of his daughters, whether legitimate or illegitimate; or
- (f.) frequents the company of any reputed thief, or of any common or reputed prostitute; or
- (g.) is lodging or residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child, . . .

Provided that a child shall not be treated as coming within the description contained in paragraph (f.) if the only common or reputed prostitute whose company the child frequents is the mother of the child, and she exercises proper guardianship and due care to protect the child from contamination. (c)

Escaping from school.

72.—(1) If a youthful offender detained in a certified reformatory school escapes from the school, he may, at any time before the expiration of his period of detention, be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school from which he escaped is situate; . . .

(2) If a child detained in a certified industrial school escapes from the school, he may at any time before the expiration of his period of detention be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school from which he escaped is situate; . . .

Powers of school officers.

85. Every officer authorised by the managers of a certified school or by a local education authority to take charge of any youthful offender or child ordered to be detained under this Part of this Act for the purpose of conveying

(c) *Wilson*, 1 R. 8; *Hay*, 2 Irv. 233.

him to or from the school, or of apprehending and bringing him back to the school in case of his escape or refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, protection, and privileges of a constable. Sect. 85.

131. For the purposes of this Act unless the context otherwise requires— General definitions.
The expression "child" means a person under the age of fourteen years;

The expression "young person" means a person who is fourteen years of age or upwards and under the age of sixteen years;

The expression "guardian," in relation to a child, young person, or youthful offender, includes any person who, in the opinion of the court having cognizance of any case in relation to the child, young person, or youthful offender, or in which the child, young person, or youthful offender is concerned, has for the time being the charge of or control over the child, young person, or youthful offender;

The expression "legal guardian," in relation to an infant, child, young person, or youthful offender, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction;

The expression "place of safety" means any workhouse or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive an infant, child, or young person;

The expression "street" includes any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not;

The expression "public place" includes any public park, garden, sea beach, or railway station, and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise;

The offences in the first schedule are:—

Any offence under sections 27, 55, or 56 of the offences against the Person Act, 1861, (*d*) and any offence against a child or young person under sections 5, 42, 43, 52, or 62 of that Act, (*e*) or under the Criminal Law Amendment Act, 1885. (*f*)

Any offence under the Children's Dangerous Performances Acts, 1879 and 1897. This is contained in section 3 of the first-named Act which provides for the case of any person who shall cause any child under the age of fourteen to take part in any public exhibition or performance whereby, in the opinion of the Court, the life or limbs of such child shall be endangered, and

Any other offence involving bodily injury to a child or young person.

Offenders who have escaped cannot be retaken without Escape. warrant, unless the original offence was one for which no warrant was required. (*g*)

Constables are required to be aiding and assisting to every Excise. officer of excise in the due execution of any act or thing

(*d*) *Post*, pp. 81 and 70. S. 55 relates to the abduction of a girl under sixteen.

(*e*) Sec. 5 relates to manslaughter, 42 to common assault or battery, 43 to aggravated assault, 52 to indecent assault on a

female, or attempt to carnally know a girl under twelve, and 62 to attempt to commit an infamous crime.

(*f*) *Inf.*

(*g*) 2 Hawk. c. 14, s. 9.

registered and enjoined by the Excise Act, 1827, or by any other Act or Acts relating to the revenue of excise to be done. (*h*)

Felonies.

With respect to Felonies, inasmuch as they form a class to themselves, they are arranged alphabetically under this head.

A constable has power to arrest in the case of felony committed, or reasonable suspicion that it has been committed (*i*), or as regards offences against the Larceny, Malicious Damage and Offences against the Person Acts, 1861, that it is about to be committed in the night-time. (*j*)

Accessories.

Accessories before and after the fact are now liable in all respects as principals. (*k*)

With regard to what is reasonable suspicion the grounds must be such as would lead a reasonable person acting without passion or prejudice to come to that conclusion. (*l*)

Bankrupts.

If any person in respect of whose estate a receiving order has been made (*m*) after the presentation of a bankruptcy petition by or (*n*) against him, or within four months before such presentation quits England and takes with him or attempts or makes preparation for quitting England and for taking with him any part of his property to the amount of £20 or upwards which ought by law to be divided among his creditors he is guilty of felony. (*o*)

An infant trader has not in respect of debts other than necessities any creditors who could be defrauded within the meaning of this section. (*p*)

Carnal knowledge of girls.

Any person who unlawfully and carnally knows any girl under thirteen. (*q*) Consent is immaterial. (*r*)

Coin.

The felonies under the Coinage Act, 1861, (*s*) are the following:—

Interpretation of terms.

Current gold and silver coin.

Copper coin.

1. In the interpretation of and for the purposes of this Act, the expression "the Queen's current gold or silver coin" shall include any gold or silver coin coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty's dominions, whether within the United Kingdom or otherwise; and the expression "the Queen's copper coin" shall include any copper coin and any coin of bronze or mixed metal coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty's said dominions;

(*h*) 7 & 8 Geo. IV. c. 53, s. 35. See *post*, p. 144.

(*i*) *Beckwith v. Philby*, 6 B. & C. 635; *Stonehouse v. Elliott*, 6 T. R. 315; *R. v. Phelps, Car. & M.* 180; *Meldrum, Kilk.* 304; *Creagh v. Gamble*, 24 L. R. 1. 458.

(*j*) 24 & 25 Vict. c. 96, s. 104; c. 97, s. 57; c. 100, s. 66, not applicable to S. I. sec 48 Geo. III. c. 140; 5 Geo. IV. c. 102, ss. 13, 16-18.

(*k*) 24 & 25 Vict. c. 94, ss. 1, 3.

(*l*) *Allen v. Wright*, 8 C. & P. 522;

Leete v. Hart, L. R. 3 C. P. 322. See *Creagh v. Gamble, ubi sup.*

(*m*) 46 & 47 Vict. c. 52, s. 163 (2).

(*n*) *Ib.* (1).

(*o*) 32 & 33 Vict. c. 62, s. 12; S. 43 & 44 Vict. c. 34, s. 13. I. 35 & 36 Vict. c. 57, s. 12.

(*p*) *R. v. Wilson*, 5 Q. B. D. 28.

(*q*) 48 & 49 Vict. c. 69, s. 4.

(*r*) *R. v. Beale*, L. R. 1 C. C. R. 10.

See *R. v. Waite*, 1892, 2 Q. B. 600.

(*s*) 24 & 25 Vict. c. 99.

and the expression "false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin" shall include any of the current coin which shall have been gilt, silvered, washed, coloured, or case over, or in any manner altered, so as to resemble or be apparently intended to resemble or pass for any of the Queen's current coin of a higher denomination; and the expression "the Queen's current coin" shall include any coin coined in any of Her Majesty's mints, or lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty's said dominions, and whether made of gold, silver, copper, bronze, or mixed metal; and where the having any matter in the custody or possession of any person is mentioned in this Act, it shall include, not only the having of it by himself in his personal custody or possession, but also the knowingly and wilfully having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any dwelling house or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of any other person.

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False or counterfeit coin.

Current coin.

What shall be possession.

2. Whosoever shall falsely make or counterfeit (t) any coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin.

Counterfeiting the gold or silver coin.

3. Whosoever shall gild or silver, or shall, with any wash or materials capable of producing the colour or appearance of gold or of silver, or by any means whatsoever, wash, case over, or colour any coin whatsoever resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin; or shall gild or silver, or shall, with any wash or materials capable of producing (u) the colour or appearance of gold or of silver, or by any means whatsoever, wash, case over, or colour any piece of silver or copper, or of coarse gold or coarse silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined into false and counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin; or shall gild, or shall, with any wash or materials capable of producing the colour or appearance of gold, or by any means whatsoever, wash, case over, or colour any of the Queen's current silver coin, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the Queen's current gold coin; or shall gild or silver, or shall, with any wash or materials capable of producing the colour or appearance of gold or silver, or by any means whatsoever, wash, case over, or colour any of the Queen's current copper coin, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the Queen's current gold or silver coin.

Colouring counterfeit coin, or any pieces of metal, with intent to make them pass for gold or silver coin.

Colouring or altering genuine coin with intent to make it pass for a higher coin.

4. Whosoever shall impair, diminish, or lighten any of the Queen's current gold or silver coin, with intent that the coin so impaired, diminished, or lightened may pass for the Queen's current gold or silver coin.

Impairing or lightening the gold or silver coin with intent, etc.

5. Whosoever shall unlawfully have in his custody or possession any filings or clippings, or any gold or silver bullion, or any gold or silver in dust, solution, or otherwise, which shall have been produced or obtained by impairing, diminishing, or lightening any of the Queen's current gold or silver coin, knowing the same to have been so produced or obtained.

Unlawful possession of filings or clippings of gold or silver coin.

6. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall buy, sell, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off, any false or counterfeit coin resembling or

Buying or selling, etc., counterfeit gold or silver

(t) See s. 30, *post*.

(u) *R. v. Turner*, 2 Moo. C.C. 41.

Sect. 6.

coin for lower value than its denomination.

Importing counterfeit coin from beyond seas.

Every second offence of uttering, etc., after a previous conviction shall be felony.

Counterfeiting copper coin.

Making, etc., instruments for counterfeiting.

Buying copper coin for lower value than its denomination.

Counterfeiting foreign gold and silver coin.

Bringing such counterfeit coin into the United Kingdom.

Uttering counterfeit foreign coin.

Third offence.

Making, mending, having in possession, or buying or selling any coining tools.

apparently intended to resemble or pass for any of the Queen's current gold or silver coin, at or for a lower rate or value than the same imports or was apparently intended to import.

7. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall import or receive into the United Kingdom from beyond the seas (x) any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit.

12. Whosoever, having been convicted, either before or after the passing of this Act, of any such misdemeanor or crime and offence as in any of the last three preceding sections mentioned, (y) or of any felony or high crime and offence against this or any former Act relating to the coin, shall afterwards commit any of the misdemeanors or crimes and offences in any of the said sections mentioned.

14. Whosoever shall falsely make or counterfeit any coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin; and whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly make or mend, or begin or proceed to make or mend, or buy or sell, or have in his custody or possession, any instrument, tool, or engine adapted and intended for the counterfeiting any of the Queen's current copper coin; or shall buy, sell, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off, any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, at or for a lower rate or value than the same imports or was apparently intended to import.

18. Whosoever shall make or counterfeit any kind of coin, not being the Queen's current gold or silver coin, but resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country.

19. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall bring or receive into the United Kingdom any such false or counterfeit coin resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, knowing the same to be false or counterfeit.

21. Whosoever, having been so convicted as in the last preceding section mentioned (z) of a second offence, shall afterwards commit the like offence of tendering, uttering, or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit.

24. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly make or mend, or begin or proceed to make or mend, or buy or sell, or have in his custody or possession, any punchcon, counter punchcon, matrix, stamp, die, pattern, or mould, in or upon which there shall be made or impressed, or which will make or impress, or which shall be adapted and intended to make or impress, (a) the figure, stamp, or apparent resemblance of both or either of the sides of any of the Queen's current gold or silver coin, or of any coin of any foreign prince, state, or country, or any part or parts of both or either of such sides; or shall make or mend, or begin or proceed to make or mend, or shall buy or sell, or have in his custody or possession, any edger, edging or other tool, collar, instrument, or

(x) This means semble from foreign parts not British. See 1 Hawk c. 17, s. 87.

(y) See *post*, p. 73.

(z) See s. 20, *post*, p. 74.

(a) The impression need not be complete. *R. v. Foster*, 7 C. & P. 495.

engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any such coin as in this section aforesaid, knowing the same to be so adapted and intended as aforesaid; or shall make or mend, or begin or proceed to make or mend, or shall buy or sell, or have in his custody or possession, any press for coinage, or any cutting engine for cutting, by force of a screw or of any other contrivance, round blanks out of gold, silver, or other metal or mixture of metals, or any other machine, (b) knowing such press to be a press for coinage, or knowing such engine or machine to have been used or to be intended to be used for or in order to the false making or counterfeiting of any such coin as in this section aforesaid.

Sect. 24.

25. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall knowingly convey out of any of Her Majesty's Mints any puncheon, counter puncheon, matrix, stamp, die, pattern, mould, edger, edging or other tool, collar, instrument, press, or engine used or employed in or about the coining of coin, or any useful part of any of the several matters aforesaid, or of any coin, hullion, metal, or mixture of metals. Conveying coining tools or coin out of the Mint without authority.

30. Every offence of falsely making or counterfeiting any coin, or of buying, selling, receiving, paying, tendering, uttering, or putting off, or of offering to buy, sell, receive, pay, utter, or put off, any false or counterfeit coin, against the provisions of this Act, shall be deemed to be complete, although the coin so made or counterfeited, or bought, sold, received, paid, tendered, uttered, or put off, or offered to be hought, sold, received, paid, uttered, or put off, shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected. When the counterfeiting shall be complete.

With respect to army deserters, upon reasonable suspicion that a person is a deserter it shall be lawful for any constable . . . to apprehend him. (c) Deserters.

It shall be lawful for the constable of any place where any person reasonably suspected to belong to the navy and be a deserter or improperly absent from duty shall be found, or of any adjoining place, and if no such constable can be immediately met with to secure him, then for any person in His Majesty's service to apprehend or cause such suspected person to be apprehended. (d)

As to naval officers it has been held that to be deserters they need not be borne on the books of a ship in commission. (e)

Persons escaping or aiding escape in cases of treason or felony are liable. (f) Escape.

As to extradition, it seems an open question whether a constable would be justified in arresting a fugitive on reasonable suspicion that he had committed a crime which would be felony if committed here. (g) Extradition.

Forgery. (h)—At common law this is the fraudulent making or alteration of a writing to the prejudice of another man's Forgery.

(b) Includes a galvanic battery. *R. v. Gover*, 9 Cox C. C. 282.

(c) 44 & 45 Vict. c. 58, s. 154.

(d) 10 & 11 Vict. c. 62, s. 9.

(e) *Hearson v. Churchill*, 1892, 2 Q. B. 144.

(f) 4 Black. 130; 1 Hale 23. An es-

caping felon can be slain if he cannot otherwise be overtaken. *Id.* 481, 2 *ib.* 218.

(g) *R. v. Weil*, 9 Q. B. D. 701.

(h) 24 & 25 Vict. c. 98. There are a number of other acts constituting this offence.

right. (i) The slightest alteration of a genuine instrument in a material point whereby a new operation is given to it is sufficient. (k) The name forged may be that of a fictitious person (l) if assumed for the purpose of fraud. (m) It must be of some document or writing, and does not include painting an artist's name on a picture. (n) And must be uttered, offered, or disposed of, though that to an innocent agent or accomplice is sufficient. (o)

Larceny.

Larceny. (p)—At common law this is the wrongful or fraudulent taking or carrying away the personal goods of another from any place with a felonious intent to convert them to the taker's own use, and make them permanently his own property without the consent of the owner. (q) Wherever there is a *bonâ fide* claim of right, however groundless, it is no felony, (r) and the intention to steal is of the essence of the act. (s) Where one sells an article and snatches it back he cannot be convicted, (t) but where he takes money before a fraudulent transaction is completed it is otherwise. (u) There must be a taking either actual or constructive. (y) As to goods lost, if the finder appropriates them believing that the owner can be found, it is larceny; (z) but not on a subsequent appropriation with such knowledge. (a) Where the owner of his own free will parts with the *property* there is no larceny however fraudulent were the means employed; (b) but this does not apply to a trick or artifice. (c) There must be a carrying away, but a bare removal is sufficient. (d)

The felonies under the Larceny Act, 1861, (e) are the following:—

Interpretation of terms.

"Document of title to goods:"

1. In the interpretation of this Act :

The term "document of title to goods" shall include any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or

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| (i) 4 Black. 247; Hume, i. 172. | (u) <i>R. v. Russelt</i> , 1892, 2 Q. B. 212. |
| (k) 1 Hawk. c. 70, s. 2. | (y) 1 Hale 514; Hume, i. 75. |
| (l) <i>R. v. Lewis</i> , Fost. 116; <i>R. v. Bolland</i> , 2 E. P. C. 958. | (z) <i>R. v. Thorborn</i> , 2 C. & K. 831. |
| (m) <i>R. v. Bontien</i> , R. & R. 260. | (a) <i>R. v. Preston</i> , 21 L. J. M. C. 41; <i>R. v. Mathews</i> , 12 Cox 489. |
| (n) <i>R. v. Closs</i> , 27 L. J. M. C. 54. | (b) <i>R. v. Macgrath</i> , L. R. 1 C. C. 205; |
| (o) <i>R. v. Palmer</i> , R. & R. 72; <i>R. v. Giles</i> , 1 Moo. C. C. 166. | <i>R. v. Lovell</i> , 8 Q. B. D. 185; <i>R. v. Adams</i> , R. & R. 225; cf. <i>Clyne</i> , 14 R. 68. |
| (p) 24 & 25 Vict. c. 96. | (c) <i>R. v. Middleton</i> , L. R. 2 C. C. 38; |
| (q) 2 East P. C. c. 16, s. 2. See <i>R. v. Ashwell</i> , 16 Q. B. D. 190; <i>R. v. Hehir</i> , 1895, 2 L. R. 709; Hume, i. 77. | <i>R. v. Hollis</i> , 12 Q. B. D. 25. |
| (r) 1 Hale 509. | (d) 4 Bl. 231; <i>M'Caughie</i> , 1 Swin. 205. |
| (s) <i>R. v. Crump</i> , 1 C. & P. 658; Hume, i. 68. | The enormous discrepancy between the amount of goods stolen and recovered affords food for reflection. |
| (t) <i>Hewson v. Gamble</i> , 56 J. P. 534. | (e) 24 & 25 Vict. c. 96. |

purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to: Sect. 1.

The term "document of title to lands" shall include any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate, or to any interest in or out of any real estate: "Document of title to lands:"

The term "trustee" shall mean a trustee on some express trust created by some deed, will, or instrument in writing, and shall include the heir, or personal representative, of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, and an official manager, assignee, liquidator, or other like officer acting under any present or future Act relating to joint-stock companies, bankruptcy, or insolvency: "Trustee:"

The term "valuable security" shall include any order, exchequer acquittance, or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the united kingdom, or of Great Britain or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, whether within the united kingdom or in any foreign state or country, or to any deposit in any bank, and shall also include any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever for money or for payment of money, whether of the united kingdom, or of Great Britain, or of Ireland, or of any foreign state, and any document of title to lands or goods as hereinbefore defined: "Valuable security:"

The term "property" shall include every description of real and personal property, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and shall also include, not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and any thing acquired by such conversion or exchange, whether immediately or otherwise: "Property:"

For the purposes of this Act, the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day. (*f*)

3. Whosoever, being a bailee of any chattel, money, or valuable security, shall fraudulently take or convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment. (*g*) Bailees fraudulently converting property guilty of larceny.

4. Whosoever shall be guilty of simple larceny. (*h*) Punishment for simple larceny.

7. Whosoever shall commit the offence of simple larceny after a previous conviction for felony. Larceny after a conviction for felony.

8. Whosoever shall commit the offence of simple larceny, or any offence hereby made punishable like simple larceny, after having been previously convicted of any indictable misdemeanour punishable under this Act. (*i*) Larceny after conviction of an indictable misdemeanour under this Act.

(*f*) To make a thing the subject of larceny, it must be of some value; though perhaps not of the value of any coin known to the law; *R. v. Morris*, 9 C. & P. 349.

(*g*) The bailment must be to re-deliver the same chattel or money. *R. v. Hoare*, 1 F. & F. 647; *R. v. Garrett*, 2 F. & F.

14; *R. v. Hassell*, 1 L. & C. 58. A married woman is, *semble*, liable. *R. v. Robson*, 1 L. & C. 93; S. com. law.

(*h*) See *Ld. Adv. v. Cunningham*, 1 Coup. 385.

(*i*) *Post*, p. 74.

Sect. 9.

Larceny after
two summary
convictions.

24 & 25 Vict.
c. 97.

9. Whosoever shall commit the offence of simple larceny, or any offence hereby made punishable like simple larceny, after having been twice summarily convicted of any of the offences punishable under summary conviction, under the provisions contained in this Act, or the Act intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to malicious Injuries to Property" (*k*) whether each of the convictions shall have been in respect of an offence of the same description or not, and whether such convictions or either of them shall have been or shall be before or after the passing of this Act.

Cattle or other Animals

Stealing
horses, cows,
sheep, etc.

Killing
animals with
intent to steal
the carcase, etc.

Stealing deer
in an unin-
closed part of
a forest.

Second offence.

Stealing deer
in any inclosed
ground.

Deer-keepers,
etc., may seize
the guns, etc.,
of offenders
who, on de-
mand do not
deliver up the
same.

Penalty on re-
sistance to
keepers, etc.,
in the execu-
tion of their
duty.

Stealing or
dredging for
oysters in
oyster fisheries.

Bonds, bills,
notes, &c.

10. Whosoever shall steal (*l*) any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep or lamb.

11. Whosoever shall wilfully kill any animal, with intent to steal the carcase, skin, or any part of the animal so killed.

12. Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer, (*m*) kept or being in the inclosed part of any forest, chase, or purlieu, having been previously convicted of any offence relating to deer, for which a pecuniary penalty shall have been imposed by this or by any former Act of Parliament, shall afterwards commit any of the offences hereinbefore enumerated, whether such second offence be of the same description as the first or not.

13. Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away or kill or wound, or attempt to kill or wound, any deer kept or being in the inclosed part of any forest, chase or purlieu, or in any inclosed land where deer shall be usually kept.

16. If any person shall enter into any forest, chase or purlieu, whether inclosed or not, or into any inclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, and . . . shall unlawfully beat or wound (*n*) any person intrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this Act. (*o*)

26. Whosoever shall steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such. (*p*)

Of Written Instruments

27. Whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, or obliterate the whole or any part of any valuable security, (*q*) other than a document of title to lands. (*r*)

(*k*) *Post*, pp. 61, 74 and 77.

(*l*) Applies only to the stealing of live cattle. Where the defendant removed sheep from a fold into the open field, there killed them, and took away only the skins, this was held a sufficient driving away of the sheep to constitute larceny. *R. v. Rawlins*, 2 East, P. C. 617. But where the carcases of the sheep were found lying in a ditch, killed, and the tallow and fat taken away, it was held that the removal to the ditch for the purpose of killing them there did not constitute a stealing. *R. v. Williams*, 1 Moo. C. C. 107. See

Ld. Adv. v. Boyd, 2 Coup. 541.

(*m*) Includes a fawn. *R. v. Strange*, Greave's Crim. Stat., 79.

(*n*) A mere battery, as by pulling the keeper down and holding him till a confederate escapes, is not sufficient. *R. v. Hale*, 2 C. & K. 326.

(*o*) See *R. v. Amey*, Russ. & Ry. 500.

(*p*) S. 3 & 4 Vict. c. 74; and see 31 & 32 Vict. c. 45, s. 42.

(*q*) See *ante*, s. 1.

(*r*) As to stealing or receiving mail bags or postal packets, see 8 Ed. VII. c. 48, ss. 50-52.

28. Whosoever shall steal, or shall for any fraudulent purpose destroy, canel, obliterate, or conceal the whole or any part of any document of title to lands. Sect. 28.

29. Whosoever shall, either during the life of the testator or after his death, steal, or for any fraudulent purpose destroy, canel, obliterate, or conceal, the whole or any part of any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both. Deeds, etc., relating to real property. Wills or codicils.

30. Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously canel, obliterate, injure, or destroy the whole or any part of any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or of any original document whatsoever of or belonging to any court of record, or relating to any matter, civil or criminal, begun, depending, or terminated in any such court, or of any bill, petition, answer, interrogatory, deposition, affidavit, order, or decree, or of any original document whatsoever of or belonging to any court of equity, or relating to any cause or matter begun, depending, or terminated in any such court, or of any original document in anywise relating to the business of any office or employment under her majesty, and being or remaining in any office appertaining to any court of justice, or in any of her majesty's castles, palaces, or houses, or in any government or public office. (s) Stealing records or other legal documents.

Of things attached to or Growing on Land

31. Whosoever shall steal, or shall rip, cut, sever, or break, with intent to steal, any glass or wood-work belonging to any building whatsoever (t), or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, or of both, respectively fixed in or to any building whatsoever, or anything made of metal fixed in any land being private property, or for a fence to any dwelling house, (u) garden, or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground. (x). Metal, glass, wood, etc., fixed to house or land.

32. Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of one pound) . . . and whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing elsewhere than in any of the situations in this section before mentioned (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of five pounds). Trees in pleasure grounds of the value of £1 or elsewhere of the value of £5.

33. Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, Stealing trees, shrubs, etc., wheresoever growing, and of any value above 1s.

(s) See *Stalker*, 2 Broun, 70. This security extends to the case of depriving an officer of the law of his warrant. *R. v. Bailey*, L. R. 1 C. C. 347.

(t) Includes an unfinished building intended as a cart shed, boarded up on all sides, having a door with a lock on it, and the frame of a roof with loose gorse thrown over it. *R. v. Worrall*, 7 C. & P. 516;

S. 4 Geo. II. c. 32.

(u) Where a man by false representations got into possession of a house, and then stripped it of its lead, the conviction was sustained. *R. v. Munday*, 2 Leach, C. C. 850; 2 East, P. C. 594.

(x) See *R. v. Jones*, Dears. & B. C. C. 555; *R. v. Jones*, Russ. C. & M. 65.

Sect. 33.

Third offence.

Stealing, etc.,
any fruit or
vegetable pro-
duction in a
garden, etc.
Second offence.

the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least, . . . having been twice convicted of any such offence . . . shall afterwards commit any of the offences in this section before mentioned.

36. Whosoever shall steal, or shall destroy or damage with intent to steal, any plant, root, fruit, or vegetable production (*y*) growing in any garden, orchard, pleasure ground, nursery ground, hothouse, greenhouse, or conservatory, . . . having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the offences in this section before mentioned.

From Mines

Ore of metal,
coal, etc.

38. Whosoever shall steal or sever with intent to steal, the ore of any metal, or any lapis calaminaris, manganese or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively.

Miners remov-
ing ore with
intent to de-
fraud.

39. Whosoever being employed in or about any mine, shall take, remove, or conceal any ore of any metal, or any lapis calaminaris, manganese, mundick, or other mineral found in such mine, with intent to defraud any proprietor or any adventurer in such mine, or any workman or miner employed thereof.

From the Person and other like Offences

Robbery or
stealing from
the person.

40. Whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another.

Assault with
intent to rob.

42. Whosoever shall assault any person with intent to rob. (*z*)

Robbery or
assault by a
person armed,
or by two or
more, or
robbery and
wounding.

43. Whosoever shall, being armed with any offensive weapon or instrument, rob, or assault with intent to rob, any person, or shall together with one or more other person or persons, rob, or assault with intent to rob, any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery, shall wound, beat, strike, or use any other personal violence to any person.

Letter de-
manding
money, etc.,
with menaces.

44. Whosoever shall send, (*a*) deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing demanding (*b*) of any person with menaces, and without any reasonable or probable cause, (*c*) any property, chattel, money, valuable security, or other valuable thing.

Demanding
money, etc.,
with menaces,
or by force,
with intent to
steal.

45. Whosoever shall with menaces or by force (*d*) demand any property, chattel, money, valuable security, or other valuable thing of any person, with intent to steal the same. (*e*)

Letter
threatening to

46. Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing accusing or

(*y*) Do not include young trees. *R. v. Hodges*, Moo. & M. 341.

(*z*) Assaulting and threatening to charge with an infamous crime, with intent thereby to extort money, is within this section. *R. v. Stringer*, 1 C. & K. 188. See *Holland*, Bach. ii. 66; *Fagen*, 2 Swin. 25.

(*a*) Sending a letter to A. in order that he may deliver it to B., is a sending to B., if A. does deliver it to B.: *R. v. Baddele*, Russ. & Ry. 484. So, leaving a letter, directed to A., near A.'s house, with an intention that it should not only reach A. but B. also, by whom it was in consequence

afterwards seen: *R. v. Grimwade*, Car. & K. 592.

(*b*) A mere request, without imposing any conditions, is not sufficient: *R. v. Robinson*, 2 East, P. C. 1110.

(*c*) It is immaterial whether such accusation be true or not. *R. v. Gardner*, 1 Car. & P. 479; *R. v. Hamilton*, 1 Car. & K. 212. See *R. v. Tomlinson*, 1895, 1 Q. B. 706.

(*d*) Either by words or gestures. See *R. v. Jackson*, 1 Leach, 269.

(*e*) The mere fact that B. has it not then in his possession is no defence. *R. v. Edwards*, 6 C. & P. 515.

threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinafter defined, with a view or intent in any of such cases to extort or gain by means of such letter or writing any property, chattel, money, valuable security, or other valuable thing, from any person, . . . the abominable crime of buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this Act.

Sect. 46.

accuse of crime, with intent to extort.
"Infamous crime" defined.

47. Whosoever shall accuse or threaten to accuse, (f) either the person to whom such accusation or threat shall be made or any other person, of any of the infamous or other crimes lastly hereinbefore mentioned, with the view or intent in any of the cases last aforesaid to extort or gain from such person so accused or threatened to be accused, or from any other person, any property, chattel, money, valuable security, or other valuable thing.

Accusing or threatening to accuse, with intent to extort.

48. Whosoever, with intent to defraud or injure any other person, shall, by any unlawful violence to or restraint of, or threat of violence to or restraint of, the person of another, or by accusing or threatening to accuse any person of any treason, felony, or infamous crime as hereinbefore defined, compel or induce any person to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or copartnership, or the seal of any body corporate, company, or society, upon or to any paper or parchment, in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security.

Inducing a person by violence or threats to execute deeds, &c., with intent to defraud.

As to Sacrilege, Burglary, and Housebreaking

50. Whosoever shall break and enter any church, chapel, meeting house, or other place of divine worship, (g) and commit any felony therein, or being in any church, chapel, meeting house, or other place of divine worship shall commit any felony therein and break out of the same.

Breaking and entering a church or chapel and committing any felony.

51. Whosoever shall enter the dwelling house of another with intent to commit any felony therein, or being in such dwelling house shall commit any felony therein, and shall in either case break out of (h) the said dwelling house in the night.

Burglary by breaking out.

52. Whosoever shall be guilty of burglary. (i)

Burglary.

(f) Threatening to procure witnesses to prove a charge against a person in custody for an offence is not a threat to accuse within this section: *R. v. Gill*, Arch. Cr. Pl. 302. A threat to make the charge before any third person is sufficient; it need not be a threat to accuse before a judicial tribunal: *R. v. Robinson*, 2 M. & Rob. 14. It is immaterial to the offence whether the prosecutor be or be not innocent of the crime imputed to him: *R. v. Gardner*, 1 C. & P. 479.

by lodgers: *R. v. Wheeldon*, 8 C. & P. 747; *R. v. Lawrence*, 4 ib. 231. On an attempt it is unnecessary to establish entry: *R. v. Spanner*, 12 Cox C. C. 155.

(i) This must take place between 9 p.m. and 6 a.m. There must be a breaking, but it is not a breaking to open a window or aperture which is already open and should be fastened: 1 Hale 551; 3 Inst. 64; *R. v. Lewis*, 2 C. & P. 628; *R. v. Spriggs*, 1 M. & R. 357; *R. v. Swallow*, 2 Russ. Cr. 8; *Alston*, 1 Swin. 433, but an entry by a chimney is a breaking: *R. v. Brice*, R. & R. 450. It may be on one night and the entry on another: 1 Hale

(g) The vestry is part of the church for this purpose: *R. v. Evans*, Car. & M. 298.

(h) This extends to the case of larceny

Sect. 53.

What building within the curtilage shall be deemed part of the dwelling-house.

Entering a dwelling-house in the night with intent to commit any felony.

Breaking into any building within the curtilage which is no part of the dwelling-house and committing any felony.

Breaking into any house, shop, warehouse, etc., and committing any felony.

House breaking, etc., with intent to commit any felony.

Stealing in a dwelling house to the value of £5 or with menaces.

Stealing goods in process of manufacture.

53. No building, although within the same curtilage with any dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for any of the purposes of this Act, unless there shall be a communication between such building and dwelling house, either immediate, or by means of a covered and inclosed passago leading from the one to the other. (*k*)

54. Whosoever shall enter any dwelling house in the night, with intent to commit any felony therein.

55. Whosoever shall break and enter any building, and commit any felony therein, such building being within the curtilage of a dwelling house, and occupied therewith, but not being part thereof according to the provision hereinbefore mentioned, (*l*) or being in any such building shall commit any felony therein, and break out of the same.

56. Whosoever shall break and enter any dwelling house, schoolhouse, shop, (*m*) warehouse, (*n*) or counting house, and commit any felony therein, (*o*) or, being in any dwelling house, schoolhouse, shop, warehouse, or counting house, shall commit any felony therein, and break out of the same.

57. Whosoever shall break and enter any dwelling house, church, chapel, meeting house, or other place of divine worship, or any building within the curtilage, schoolhouse, shop, warehouse, or counting house, with intent to commit any felony therein. (*p*)

In the House

60. Whosoever shall steal in any dwelling house any chattel, money, or valuable security to the value in the whole of five pounds or more. (*q*)

61. Whosoever shall steal any chattel, money, or valuable security in any dwelling house, and shall by any menace or threat put any one being therein in bodily fear.

In Manufactories

62. Whosoever shall steal to the value of ten shillings, any woollen, linen, hempen, or cotton yarn, or any goods or article of silk, woollen, linen, cotton, alpaca, or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material whilst laid, placed, or exposed, during any stage, process, or progress of manufacture, in any building, field, or other place.

551. It must take place in a dwelling house, which includes every permanent building so used. The residence of caretakers is not sufficient: *R. v. Smith*, 2 E. P. C. 497; *R. v. Flannagan*, R. & R. 167. Nor where the owner or occupier is not yet in actual occupation: *R. v. Hallard*, 2 E. P. C. 498; *R. v. Thompson*, 2 Leach 771. There must be an entry: 1 Hale 551; *Ashton*, 1 Swin. 478. Though with any part of the body or an instrument is sufficient: *R. v. Davis*, R. & R. 499; *O'Neil*, 2 Brown 394.

(*k*) See *R. v. Burrows*, 1 Moo. C. C. 274; *R. v. Higgs*, 2 C. & K. 322; see *R. v. Eggington*, 2 Bos. & P. 508. The building must be occupied with the house in the same right; where, therefore, a house let to and occupied by A. communicated with

a building let to and occupied by A. and B., it was held that the building could not be considered as part of the dwelling house of A.: *R. v. Jenkins*, Russ. & Ry. 244.

(*l*) See *R. v. Hancock*, Russ. & Ry. 170; *R. v. Bennett*, *ib.* 289; *R. v. Davis*, *ib.* 322; *R. v. Gilbert*, 1 C. & K. 84.

(*m*) A mere workshop (such as a carpenter's or blacksmith's shop) is not within the section: *R. v. Sanders*, 9 Car. & P. 79; but see *R. v. Carter*, 1 Car. & K. 173.

(*n*) *R. v. Hill*, 2 Moo. and R. 458.

(*o*) See *R. v. Andrews*, Carr. & M. 121.

(*p*) Hume, i. 89.

(*q*) Stealing by the owner of the house is within the statute: *R. v. Bowden*, 1 C. & K. 847; see *R. v. Taylor*, Russ. & Ry. 418.

In Ships, Wharfs, etc.

Sect. 63.

63. Whosoever shall steal any goods or merchandise in (r) any vessel, barge, or boat of any description whatsoever (s) in any haven, or in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river, or canal, or shall steal any goods or merchandise from any dock, wharf, or quay adjacent to any such haven, port, river, canal, creek, or basin. Stealing from ships, docks, wharfs, etc.

64. Whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel. Stealing from ship in distress or wrecked.

By Clerks, Servants, or Persons in the Public Service

67. Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer. Larceny by clerks or servants.

68. Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, (t) shall fraudulently embezzle (u) any chattel, money, or valuable security, which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof. Embezzlement by clerks or servants.

69. Whosoever being employed in the public service of her majesty, or being a constable or other person employed in the police of any county, city, borough, district, or place whatsoever, shall steal any chattel, money, or valuable security belonging to or in the possession or power of her majesty, or intrusted to or received or taken into possession by him by virtue of his employment. (y) Larceny by persons in the queen's service, or by the police.

(r) Applies only to such goods, &c., as are usually lodged in vessels, or on wharves, quays, &c.: *R. v. Grimes*, *Fost.* 79a.; *R. v. Leigh*, 1 *Leach*, C. C. 52. A passenger's luggage is within the Act: *R. v. Wright*, 7 C. & P. 159.

(s) A man cannot be guilty of this offence in his own ship: *R. v. Madox*, *Russ. & Ry.* 92.

(t) Not confined to clerks and servants, &c., of persons in trade; the mode by which the party is remunerated is immaterial. If the clerk or servant of several partners embezzle the private money of one of them, he is within the statute: *R. v. Leach*, 3 *Stark. N. P. C.* 70; see also *R. v. Bayley*, 1 *Dear. & B.* 121. So where a person is employed as a traveller by several persons, to receive money, and paid wages by each: *R. v. Carr*, *Russ. & R.* 198; *R. v. Datty*, 2 *Moo. C. C.* 257. And where a coachman was employed by one of the proprietors of a coach to drive for a certain part of the journey, and to receive money and hand it over to him: *R. v. White*, 8 C. & P. 742. A female servant is within the statute: *R. v. Smith*, *Russ. & Ry.* 267; and an apprentice although under age: *R. v. Mellish*, *Russ. & R.* 80; and a son acting as clerk: *R. v. Foulkes*, *L. R.* 2 C. C. 150; and a commercial traveller: *R. v. Bailey*,

12 *Cox* 56; *R. v. Tite*, *L. & C.* 29; but not a common agent: *R. v. Bowers*, *L. R.* 1 C. C. 41. The employment need not be permanent: *R. v. Spencer*, *R. & R.* 299; *R. v. Smith*, *ib.* 516; but for a single purpose is not sufficient: *R. v. Nettleton*, 1 *Moo. C. C.* 259; *Field*, 2 *Swin.* 24. The section does not apply to an overseer's assistant: *R. v. Harris*, 69 *L. T.* 25; but it does to a company director employed to collect monies: *R. v. Stuart*, 1894, 1 *Q. B.* 310. See *R. v. Jensen*, 1 *Moo. C. C.* 434, as to the clerk of a savings bank; *R. v. Hall*, *ib.* 474, as to the clerks or servants of friendly and other societies; *R. v. Squire*, *Russ. & R.* 349, as to the clerks or servants of parish officers. A person cannot be convicted as the clerk or servant of an illegal society: *R. v. Hunt*, 8 C. & P. 642.

(u) See *R. v. Jackson*, 1 C. & K. 384; *R. v. Squire*, *Russ. & R.* 349; *R. v. Welch*, 1 *Den.*, C. C. 199. If the receipt of the money for the master be admitted, the wilful omission to pay it over would not amount to embezzlement. See *R. v. Hodgson*, 3 C. & P. 422; *R. v. Norman*, *Carr. & M.* 591; and cf. *R. v. Lister*, *D. & B. C. C.* 118; *R. v. Guelder*, *Bell*, C. C. 284.

(y) Not applicable to county court bailiff: *R. v. Parsons*, 16 *Cox C. C.* 498.

Sect. 70.

Embezzlement
by persons in
the queen's
service, or by
the police.

70. Whosoever, being employed in the public service of her majesty, or being a constable or other person employed in the police of any county, city, borough, district, or place whatsoever, and intrusted by virtue of such employment with the receipt, custody, management, or control of any chattel, money, or valuable security, shall embezzle any chattel, money, or valuable security which shall be intrusted to or received or taken into possession by him by virtue of his employment, or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit, or for any purpose whatsoever, except for the public service.

Embezzlement
by officers of
the bank of
England or
Ireland.

73. Whosoever, being an officer or servant of the governor and company of the bank of England or of the bank of Ireland, and being intrusted with any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest, or money, or with any security, money, or other effects of or belonging to the said governor and company, or having any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest, or money, or any security, money, or other effects of any other person, body politic or corporate, lodged or deposited with the said governor and company, or with him as an officer or servant of the said governor and company, shall secretly, embezzle, or run away with any such bond, deed, note, bill, dividend or other warrant, security, money, or other effects as aforesaid, or any part thereof.

By Tenants or Lodgers

Tenant or
lodger stealing
chattel or fix-
ture let to hire
with house or
lodgings.

74. Whosoever shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her or by her husband, or by any person on behalf of him or her or her husband.

Receiving stolen Goods

Receiving,
where the
principal is
guilty of
felony.

91. Whosoever shall receive (z) any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof shall amount to a felony, either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, (a) taken, extorted, obtained, embezzled, or disposed of.

Recovery of Stolen Property

Taking a re-
ward for help-
ing to the re-
covery of
stolen property
without bring-
ing the offender
to trial.

101. Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever which shall by any felony or misdemeanor have been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, as in this Act before-mentioned (unless he shall have used all due diligence to cause the offender to be brought to trial for the same). (b)

(z) This means a receipt whereby the possession of the stolen property is divested out of the thief: *R. v. Wiley*, 2 Den. C. C. 37. Manual possession, however, is unnecessary; it is sufficient if the receiver has the control over the property: *R. v. Smith*, Dears. C. C. 494; see *R. v. Hobson*, *ib.* 400. A receiving from the thief, with the knowledge and concurrence of the owner of the goods, is not within the statute: *R. v. Dolan*, *ib.* 436. The

principal offender need not have been indicted: *R. v. Jervis*, 6 C. & P. 156; *R. v. Pulham*, 9 *ib.* 280. The receipt need not be direct from the thief: *R. v. Reardon*, L. R. 1 C. C. 31. See *Mackenzie*, Arkley, 135.

(a) If the owner resume possession before the receiving there is no offence: *R. v. Villensky*, 1892, 2 Q. B. 597.

(b) See *R. v. Pascoe*, 1 Den. C. C. 456.

The following are felonies under the Malicious Damage Act, 1861 (c):—

Sect. 1.

Injuries by Fire to Buildings, and Goods therein

Malicious damage.

1. Whosoever shall unlawfully and maliciously set fire to any church, chapel, meeting house, or other place of divine worship. (*d*)
2. Whosoever shall unlawfully and maliciously set fire to any dwelling house, any person therein. (*e*)
3. Whosoever shall unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, storehouse, granary, hovel, shed, or fold, or to any farm building, or to any building or erection used in farming land, or in carrying on any trade or manufacture, or any branch thereof, whether the same shall then be in the possession of the offender or in the possession of any other person, with intent thereby to injure or defraud any person. (*f*)
4. Whosoever shall unlawfully and maliciously set fire to any station, engine house, warehouse, or other building belonging or appertaining to any railway, port, dock, or harbour, or to any canal or other navigation.
5. Whosoever shall unlawfully and maliciously set fire to any building, other than such as are in this Act before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor law union, parish, or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution.
6. Whosoever shall unlawfully and maliciously set fire to any building other than such as are in this Act before mentioned. (*g*)
7. Whosoever shall unlawfully and maliciously set fire to any matter or thing being in, against, or under any building, under such circumstances that if the building were thereby set fire to the offence would amount to felony. (*h*)
8. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any building, or any matter or thing in the last preceding section mentioned, under such circumstances that if the same were thereby set fire to the offender would be guilty of felony. (*i*)

Setting fire to a church or chapel.
Setting fire to a dwelling-house, any person being therein.
Setting fire to a house, outhouse, manufactory, farm building, etc.
Setting fire to any railway station, etc.
Setting fire to any public building.
Setting fire to other buildings.
Setting fire to goods in any building the setting fire to which is felony.
Attempting to set fire to buildings.

By explosive Substances to Buildings and Goods therein.

9. Whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down, or damage the whole or any part of any dwelling house, any person being therein, or of any building whereby the life of any person shall be endangered. (*k*)

Destroying or damaging a house with gunpowder, any person being therein.

(c) 24 & 25 Vict. c. 97. S. common law.

(d) S. 7 Anne c. 21.

(e) *Maclean*, Arkley 262.

(f) An unfinished structure is not within the section. *R. v. Edgell*, 11 Cox C. C. 132. See *Lord Advocate v. Pollock*, 1 Comp. 257; *Lord Advocate v. Smillie*, 10 R. 70.

(g) An unfinished dwelling-house is within this section: *R. v. Munning*, L. R. 1 C. C. 338. If a man wilfully setting fire to his house burn that of a neighbour it is sufficient: *R. v. Probert*, 2 East P. C. 1030; *R. v. Isaac*, ib. 1031; *Little*, 2 Irv. 624. The absence of malice or spite to

the owner is no answer: *R. v. Salmon*, R. & R. 26; nor that the burning is trifling: 1 Hawk. c. 39, s. 17; 3 Inst. 66.

(h) See *Arthur*, 1 Swin. 124. This does not extend to throwing a light into a letter-box: *R. v. Datstone*, 10 Cox C. C. 20; nor to setting fire to goods to injure the owner of the goods but not of the house: *R. v. Child*, L. R. 1 C. C. 307.

(i) If frustrated by extraneous circumstances it is still an attempt: *R. v. Ring* 66 L. T. 300; 50 & 51 Vict. c. 35, s. 61.

(k) This does not extend to mere wanton mischief: *R. v. Brown*, 3 F. & F. 821; but includes persons outside the building: *R. v. McGrath*, 14 Cox C. C. 598.

Sect. 10.

Attempting to
destroy build-
ings with
gunpowder.

10. Whosoever shall unlawfully and maliciously place or throw in, into, upon, under, against, or near any building any gunpowder or other explosive substance, with intent to destroy or damage any building, or any engine, machinery, working tools, fixtures, goods, or chattels, whether or not any explosion take place, and whether or not any damage be caused. (1)

To Buildings by Rioters, &c.

Rioters de-
molishing
church, build-
ing, etc.

11. If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force demolish, or pull down or destroy, or begin to demolish, pull down, or destroy, (m) any church, chapel, meeting house, or other place of divine worship, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel, or fold, or any building or erection used in farming land, or in carrying on any trade or manufacture, or any branch thereof, or any building, other than such as are in this section before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor law union, parish, or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam engine or other engine for sinking, working, ventilating, or draining any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine.

To Manufactures, Machinery, etc.

Destroying
goods in pro-
cess of manu-
facture, certain
machinery,
etc.

14. Whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any goods or article of silk,

(1) By 46 Vict. c. 3 the following are also felonies. 2. Any person who unlawfully and maliciously causes by an explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property has been actually caused or not. 3. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions unlawfully and maliciously (a.) does any act with intent to cause by an explosive substance or conspires to cause by an explosive substance an explosion in the United Kingdom of a nature likely to endanger life or to cause serious injury to property or (b.) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or cause serious injury to property in the United Kingdom, whether any explosion does or not take place and whether any injury to person or property has been actually caused or not. (See *R. v. Charles*, 17 Cox. 499.) 4. Any person who makes or knowingly has in his possession or under his control any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it or does

not have it in his possession or under his control for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object. 5. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever procures, counsels, aids, abets, or is accessory to the commission of any crime under this Act. By sect. 4 explosive substance = any materials for making any explosive substance; any apparatus, machine, implement, or materials, used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

(m) There must be a beginning to demolish some part of the freehold. A demolition by fire is within the section: *R. v. Howell*, 9 C. & P. 437. It is sufficient if a house be destroyed as a dwelling: *R. v. Phillips*, 2 Moo. C. C. 252. If there be a *bonâ fide* claim of right, though accompanied by a riot, it is not sufficient. *Id.*

Sect. 14.

woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other, or mixed with any other material, or shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy or render useless, any loom, frame, machine, engine, rack, tackle, tool, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences in this section mentioned. (n)

15. Whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any machine or engine, whether fixed or moveable, used or intended to be used for sowing, reaping, moving, thrashing, ploughing, or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, (except the manufacture of silk, woollen, linen, cotton, hair, mohair, or alpaca goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace). (o)

Destroying machines in other manufactures, threshing machines, etc.

To Corn, Trees, and Vegetable Productions

16. Whosoever shall unlawfully and maliciously set fire to any crop of hay, grass, corn, grain, or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, wheresoever the same may be growing. (p)

Setting fire to crops of corn, etc.

17. Whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood, or bark, or to any steer of wood or bark. (q)

Setting fire to stacks of corn, etc.

18. Whosoever shall unlawfully and maliciously by any evet act attempt to set fire to any such matter or thing as in either of the last two preceding sections mentioned, under such circumstances that if the same were thereby set fire to the offender would be, under either of such sections, guilty of felony. (r)

Attempting to set fire to any crops of corn, etc., or to any stack or steer.

19. Whosoever shall unlawfully and maliciously cut or otherwise destroy any hopbinds growing on poles in any plantation of hops.

Destroying hopbinds.

20. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or

Destroying or damaging trees, shrubs,

(n) *M'Vic*, 2 *Irv.* 429.

S. 56 *Geo. III.* c. 125; *I.* 5 & 6 *Vict.* c. 28.

(o) The destruction of any part, whether it works, or not—*R. v. Bartlett*, 2 *Deac. Cr. L.* 1517—is within the section: *R. v. Mackerel*, 4 *C. & P.* 448; *Campbell*, *S. (Inst.)* 105; but if a part be destroyed through fear the remaining parts are not so: *R. v. West*, 2 *Deac.* 1518. It extends to ploughs and waterwheels: *R. v. Gray*, 33 *L. J. M. C.* 78; *R. v. Fidler*, 4 *C. & P.* 449; and the damage need not be permanent: *R. v. Fisher*, *L. R.* 1 *C. C.* 7;

R. v. Dary, 1 *Cox C. C.* 60.

(p) This does not apply to a single tree: value of more than £1 growing in a plea-

(q) Flax in seed is included: *R. v. Spencer*, 26 *L. J. M. C.* 16; but straw in sure ground, a lorry in transitu, *R. v. Sitchwell*, *L. R.* etc.

2 *C. C.* 21: or wood in a temporary loft is not. *R. v. Aris*, 6 *C. & P.* 348.

(r) It is sufficient if the attempt be abandoned before being actually made: *R. v. Taylor*, 1 *F. & F.* 511.

Sect. 20. shrub, or any underwood, growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining (s) or belonging to any dwelling house, (in case the amount of the injury done shall exceed the sum of one pound).

Destroying or
damaging
trees, shrubs,
etc., to the
value of more
than £5, grow-
ing elsewhere
than in a plea-
sure ground,
etc.

21. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, growing elsewhere than in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining to or belonging to any dwelling house, (in case the amount of injury done shall exceed the sum of five pounds). (t)

Destroying any
fruit or vege-
table produc-
tion in a
garden.

22. Whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production, (u) growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory, . . . having been convicted of any such offence either against this or any former Act of Parliament.

Second offence.

To Mines

Setting fire to
a coal mine.

26. Whosoever shall unlawfully and maliciously set fire to any mine of coal, cannel coal, anthracite, or other mineral fuel.

Attempting to
set fire to a
mine.

27. Whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any mine, under such circumstances that if the mine were thereby set fire to the offender would be guilty of felony.

Conveying
water into a
mine, obstruct-
ing the shaft,
etc.

28. Whosoever shall unlawfully and maliciously cause any water to be conveyed or run into any mine, or into any subterraneous passage communicating therewith, with intent thereby to destroy or damage such mine, or to hinder or delay the working thereof, or shall with the like intent unlawfully and maliciously pull down, fill up, or obstruct, or damage with intent to destroy, obstruct, or render useless, any airway, waterway, drain, pit, level, or shaft of or belonging to any mine, . . . Provided, that this provision shall not extend to any damage committed underground by any owner of any adjoining mine in working the same, or by any person duly employed in such working. (x)

Saving for ad-
joining owners
doing damage
in working.

Damaging
steam engines,
staiths, wag-
gonways, etc.,
for working
mines.

29. Whosoever shall unlawfully and maliciously pull down or destroy, or damage with intent to destroy or render useless, any steam engine (y) or other engine for sinking, draining, ventilating, or working, or for in anywise assisting in sinking, draining, ventilating, or working any mine, or any appliance or apparatus in connexion with any such steam or other engine, or any staith, building, or erection (z) used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggonway, or trunk be completed or in an unfinished state, or shall unlawfully and maliciously stop, obstruct, or hinder the working of any such steam or other engine, or of any such appliance or apparatus as aforesaid, with intent thereby to destroy or damage any mine, or to hinder, obstruct, or delay the working thereof, or shall unlawfully and maliciously wholly or partially cut through, sever, break, or unfasten, or damage with intent to destroy or render useless, any rope, chain, or tackle, of whatsoever material the same shall be made, used in any mine, or in or upon any inclined plane, railway or other way, or other work whatsoever, in anywise belonging or appertaining to or connected with or employed in any mine or the working or business thereof.

(s) See *R. v. Hodges*, M. & M. 341.

(t) Actual injury: *R. v. Whiteman*, Dears. C. C. 353.

(u) Does not include young trees: *R. v. Hodges*, M. & M. 341.

(x) See *R. v. James*, 8 C. & P. 131; *R.*

v. Matthews, 14 Cox C. C. 5.

(y) Includes a case of setting an engine going with great velocity so as to injure it: *R. v. Norris*, 9 C. & P. 241.

(z) Includes a scaffold: *R. v. Whittingham*, 9 C. & P. 234.

To Sea and River Banks, and to Works on Rivers, Canals, etc.

Sect. 30.

30. Whosoever shall unlawfully and maliciously break down or cut down or otherwise damage or destroy any sea bank or sea wall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh, whereby any land or building shall be or shall be in danger of being overflowed or damaged, or shall unlawfully and maliciously throw, break, or cut down, level, undermine, or otherwise destroy, any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work, belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal.

Destroying any sea bank, etc., or wall on any canal, etc.

31. Whosoever shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea bank or sea wall, or the bank, dam, or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or shall unlawfully and maliciously open or draw up any flood-gate or sluice, or do any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof.

Removing the piles of any sea bank, etc., or doing any damage to obstruct the navigation of a river or canal.

To Bridges, Viaducts

33. Whosoever shall unlawfully and maliciously pull or throw down or in anywise destroy any bridge (whether over any stream of water or not), or any viaduct or aqueduct, over or under which bridge, viaduct, or aqueduct any highway, railway, or canal shall pass, or do any injury with intent and so as thereby to render such bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable.

Injury to a public bridge, viaduct, etc., over or under any highway, railway, or canal.

To Railway Carriages and Telegraphs

35. Whosoever shall unlawfully and maliciously put, place, cast, or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway.

Placing wood, etc., on railway, taking up rails, etc., turning points, showing or hiding signals, etc., with intent to obstruct or overthrow any engine, etc.

To Cattle

40. Whosoever shall unlawfully and maliciously kill, maim, or wound any cattle. (a)

Killing or maiming cattle.

To Ships

42. Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, (b) whether the same be complete or in an unfinished state.

Setting fire to or casting away or destroying a ship.

(a) Maiming without wounding must entail permanent injury: *R. v. Jeans*, 1 C. & K. 539; *R. v. Haywood*, 2 E. P. C. 1078; *R. & R.* 16. The wounding need not be done with an instrument: *R. v. Bullock*, L. R. 1 C. C. 115; and it is sufficient

if it be done recklessly: *R. v. Welch*, 1 Q. B. D. 23.

(b) Includes, *semble*, a pleasure boat: *R. v. Boyers*, 4 C. & P. 539; but not a barge: *R. v. Smith*, *ib.* 569.

Sect. 43.

Setting fire to or casting away, etc., a ship, to prejudice the owner or underwriters.

Attempting to set fire to or cast away, etc., a ship.

Placing gunpowder near a ship with intent to damage it.

Damaging ships otherwise than by fire or explosion.

Exhibiting false signals, etc.

Removing or concealing buoys and other sea marks.

Destroying wrecks or any articles belonging thereto.

43. Whosoever shall unlawfully and maliciously set fire to, or cast away, or in anywise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same.

44. Whosoever shall unlawfully and maliciously, by any overt act, attempt to set fire to, cast away, or destroy any ship or vessel, under such circumstances that if the ship or vessel were thereby set fire to, cast away, or destroyed, the offender would be guilty of felony.

45. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any ship or vessel any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel, or any machinery, working tools, goods or chattels, whether or not any explosion take place, and whether or not any injury be effected.

46. Whosoever shall unlawfully and maliciously damage, otherwise than by fire, gunpowder, or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same or render the same useless.

47. Whosoever shall unlawfully mask, alter, or remove any light or signal, or unlawfully exhibit any false light or signal, with intent to bring any ship, vessel, or boat into danger, or shall unlawfully and maliciously do anything tending to the immediate loss or destruction of any ship, vessel, or boat, and for which no punishment is herein-before provided.

48. Whosoever shall unlawfully and maliciously cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall unlawfully and maliciously do any act with intent to cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall in any other manner unlawfully and maliciously injure or conceal any boat, buoy, buoy rope, perch, or mark used or intended for the guidance of seamen or the purpose of navigation.

49. Whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel.

Sending Letters threatening to Burn or Destroy.

Sending letters threatening to burn or destroy houses, buildings, ships, etc.

50. Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, or any grain, hay, or straw, or other agricultural produce, in or under any building, or any ship or vessel, or to kill, maim, or wound any cattle.

Manslaughter.

Manslaughter. (c)—This is (1) involuntary—where a man doing an unlawful act not amounting to felony, by accident kills another, or where by culpable neglect of duty, he is the cause of the death of another; or (2) voluntary—where in a sudden quarrel two persons fight, and one of them kills the other, or where a man greatly provokes another by some personal violence and the other immediately kills him. (*d*)

(c) 4 Black. 193.

(d) Arch. C. C., 22nd ed., p. 750.

Mutiny.—Any person who shall maliciously and advisedly endeavour to seduce any person serving in His Majesty's forces by sea or land from his duty and allegiance to His Majesty, or to incite or stir up such person to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever. (e)

Sect. 1.

Mutiny.

Oaths Unlawful.—Any person who shall administer or cause to be administered . . . any oath or engagement, purporting or intending to bind the person taking the same to engage in any mutinous or seditious purpose, or to disturb the public peace, or to be of any association, society, or confederacy formed for any such purpose or to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose, or not to inform or give evidence of any associate, confederate, or other person, or not to reveal or discover any unlawful combination or confederacy, or not to reveal or discover any illegal act done or to be done, or not to reveal or discover any illegal oath or engagement which may have been administered or tendered to or taken by such person or persons or to or by any other person or the import of any such oath or engagement. (f)

Oaths unlawful.

Every person who shall administer or cause etc. any oath or engagement purporting or intending to bind the person taking the same to commit any treason or murder or felony, and any person who shall take any such oath or engagement not being compelled thereto. (g)

Penal Servitude, at large during term.—If any offender who shall have been so sentenced . . . shall be afterwards at large . . . without some lawful cause before the expiration of the term. (h)

Penal servitude, at large during term.

The following are felonies under the Offences against the Person Act, 1861. (i)

Personal offences.

1. *Murder.*—At common law this is where a person of sound memory and discretion unlawfully killeth any reasonable being and under the king's peace with malice aforethought express or implied. (k)

Murder.

Attempts to Murder

11. Whosoever shall administer (l) to or cause to be administered to or to be taken by any person any poison or other destructive thing, or shall by any means whatsoever wound or cause any grievous bodily harm to any person, with intent in any of the cases aforesaid to commit murder.

Administering poison, or wounding, with intent to murder.

12. Whosoever, by the explosion of gunpowder or other explosive substance, shall destroy or damage any building, with intent to commit murder.

Destroying or damaging a building with gunpowder, with intent to murder.

13. Whosoever shall set fire to any ship or vessel, or any part thereof, or any part of the tackle, apparel, or furniture thereof, or any goods or chattels being therein, or shall cast away or destroy any ship or vessel, with intent in any of such cases to commit murder.

Setting fire to or casting away a ship, with intent to murder.

14. Whosoever shall attempt to administer to or shall attempt to cause to be administered to or to be taken by any person any poison or other destructive

Attempting to administer poison, or shooting or attempting to

(e) 37 Geo. III. c. 70. See also 44 & 45 Vict. c. 58, s. 7.

(f) 37 Geo. III. c. 123. This extends to oaths of secret societies and unlawful combinations: *R. v. Marks*, 3 East, 157.

(g) 52 Geo. III. c. 104.

(h) 5 Geo. IV. c. 84, s. 22. I. 9 ib. c. 54.

(i) 24 & 25 Vict. c. 100: S. com. law.

(k) 3 Inst. 47.

(l) Actual delivery by the hand of the defendant is not necessary: *R. v. Harley*, 4 C. & P. 369; *R. v. Michael*, 9 ib. 356.

Sect. 14.

shoot or attempting to drown, etc., with intent to murder.

By any other means attempting to commit murder.

Sending letters threatening to murder.

thing, or shall shoot at any person, or shall, by drawing a trigger or in any other manner, attempt (*m*) to discharge any kind of loaded arms (*n*) at any person, or shall attempt to drown, suffocate, or strangle any person, with intent, in any of the cases aforesaid, to commit murder, whether any bodily injury be effected or not.

15. Whosoever shall, by any means other than those specified in any of the preceding sections of this Act, attempt to commit murder. (*o*)

Letters Threatening to Murder

16. Whosoever shall maliciously send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter (*p*) or writing threatening to kill or murder any person.

Acts causing or tending to cause Danger to Life or Bodily Harm

Impeding a person endeavouring to save himself or another from shipwreck.

Shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, or to resist apprehension.

What shall constitute loaded arms.

Attempting to choke, etc., in order to commit or assist in the committing of any indictable offence.

Using chloroform, etc., to commit or assist in the committing of any indictable offence.

17. Whosoever shall unlawfully and maliciously prevent or impede any person, being on board of or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, in his endeavour to save his life, or shall unlawfully and maliciously prevent or impede any person in his endeavour to save the life of any such person as in this section first aforesaid. (*q*)

18. Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person, or shoot at (*r*) any person, or, by drawing a trigger or in any other manner, attempt to discharge (*s*) any kind of loaded arms at any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person. (*t*)

19. Any gun, pistol, or other arms which shall be loaded in the barrel with gunpowder or any other explosive substance, and ball, shot, slug, or other destructive material, shall be deemed to be loaded arms within the meaning of this Act, although the attempt to discharge the same may fail from want of proper priming or from any other cause. (*u*)

21. Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall, by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence.

22. Whosoever shall unlawfully apply or administer to or cause to be taken by, or attempt to apply or administer to or attempt to cause to be administered to or taken by, any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent in any of such cases thereby to

(*m*) If the act be prevented there is no attempt: *R. v. St. George*, 4 C. & P. 483.

(*n*) It must be so loaded as to produce the effect if discharged: *R. v. Carr*, Russ. & R. 377.

(*o*) Does not include attempted suicide: *R. v. Burgess*, L. & C. 258.

(*p*) See *Ld. Adv. v. Macdonald*, 4 Coup. 268.

(*q*) Hume, i. 482.

(*r*) As to shooting at boats belonging to the revenue, see *post*, p. 126.

(*s*) See *R. v. Linneker*, 1906, 2 K. B. 99.

(*t*) S. 10 Geo. IV. c. 38: *Duncan*, 2 Broun, 455; *Ld. Adv. v. Barbier*, 40 J. 1. This applies to firing recklessly at a group: *R. v. Fretwell*, 33 L. J. M. C. 128; but not to a man who has communicated a venereal disease to his wife: *R. v. Clarence*, 22 Q. B. D. 23.

(*u*) *R. v. Jackson*, 17 Cox C. C. 104: See 10 Geo. IV. c. 38.

enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence.

23. Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm. (x)

28. Whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person.

29. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance (y) or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon or otherwise apply to any person, any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, whether any bodily injury be effected or not.

30. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any building, ship, or vessel any gunpowder or other explosive substance, with intent to do any bodily injury to any person, whether or not any explosion take place, and whether or not any bodily injury be effected.

32. Whosoever shall unlawfully and maliciously put or throw upon or across any railway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove, any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway.

33. Whosoever shall unlawfully and maliciously throw, or cause to fall or strike, at, against, into, or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck of any train of which such first-mentioned engine, tender, carriage, or truck shall form part.

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Maliciously administering poison, etc., so as to endanger life or inflict grievous bodily harm.

Causing bodily injury by gunpowder.

Causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to do grievous bodily harm.

Placing gunpowder near a building, etc., with intent to do bodily injury to any person.

Placing wood, etc., on railway, taking up rails, turning points, showing or hiding signals, etc., with intent to endanger passengers.

Casting stone, etc., upon a railway carriage, with intent to endanger the safety of any person therein, or in any part of the same train.

Rape.

Abduction of a woman against her will, from motives of lucre.

Rape, Abduction, and Defilement of Women

48. Whosoever shall commit the crime of rape. (z)

53. Where any woman of any age shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be a presumptive heiress or coheiress, or presumptive next of kin, or one of the presumptive next of kin, to any one having such interest, whosoever shall, from motives of lucre, take away or detain such woman

obtained by fraud; *R. v. Flattery*, 2 Q. B. D. 410; 48 & 49 Vict. c. 69, s. 4; *Sweeney*, 3 Ir. 109. There must be penetration: *R. v. Hill*, 1, East P. C. 439; *Robertson*, 1 Swin. 93.

(x) See *Ld. Adv. v. Milne*, 1 Coup. 28.

(y) See *Ld. Adv. v. Costello*, 4 Coup. 603.

(z) This must take place by force and without consent, and if the consent be through fear or duress it is void: 1 Hawk. c. 41, s. 6; *Hume*, i. 301. So also is it if

Sect. 53. against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, and whosoever shall fraudulently allure, take away, or detain such woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person. (a)

Fraudulent abduction of a girl under age against the will of her father, etc.

Forcible abduction of any woman with intent to marry or carnally know her, or cause her to be married, etc.

54. Whosoever shall, by force, take away or detain against her will any woman, of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person.

Child-stealing

Child-stealing, or receiving stolen child.

56. Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy or entice away or detain, any child under the age of fourteen years, with intent to deprive any parent, guardian, or other person having the lawful care or charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, and whosoever shall, with any such intent, receive or harbour any such child, knowing the same to have been, by force or fraud, led, taken, decoyed, enticed away, or detained, as in this section before mentioned, . . . Provided, that no person who shall have claimed any right to the possession of such child, or shall be the mother or shall have claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child, or taking such child out of the possession of any person having the lawful charge thereof. (b)

Bigamy

Bigamy.

Nothing herein contained to extend to second marriages in the cases herein mentioned.

57. Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere, (c) . . . Provided, that nothing in this section contained shall extend to any second marriage contracted elsewhere than in England and Ireland by any other than a subject of Her Majesty, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

(a) If the woman be taken away at first by consent and afterwards refuse to continue with the offender and be forcibly detained by him it is sufficient: *Hawk. c. 41, s. 7*; and so if she be forcibly taken away and afterwards married or defiled by her consent: *Fulwood, Cro. Car. 488*; *Swendsen, 14 St. Tr. 559*; or if it be effected by fraud: *R. v. Wakefield, 2 Lew. C. C. 279*; *R. v. Burrell, 33 L. J. M. C. 54*; *Fraser, Arkley, 280*.

(b) *Millar, 4 Irv. 74*.

(c) It is sufficient if a person goes through the form and ceremony of a second marriage though it be unlawful and void: *R. v. Allen, 1 R. 1 C. C. 367*; *R. v. Bawn, 1 Cox C. C. 33*; *R. v. Penon, 5 C. & P. 412*. But a belief in good faith and on reasonable grounds that the husband or wife is dead is a good defence: *R. v. Tolson, 23 Q. B. D. 168*; *McDonald, 1 Broun, 238*.

Attempts to procure Abortion

58. Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent. (d)

Administering drugs or using instruments to procure abortion.

Unnatural Offences

61. Whosoever shall be guilty of the crime of buggery, committed either with mankind (e) or with any animal. (f)

Sodomy and bestiality.

A person who commits the offence of personation, or of aiding, abetting, counselling, or procuring the commission of that offence. (g)

Personation.

Whosoever with intent to commit, or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel, shall assault with intent to murder any person being on board of or belonging to such ship or vessel, or shall stab, cut, or wound any such person, or unlawfully do any act by which the life of such person may be endangered. (h)

Piracy.

Persons committing the offences of prison-breach or rescue in cases of felony. (i)

Prison-breach.

Prisoner of war, aiding to escape. (k)

Prisoner of war.

Rescue of a traitor or felon from custody (l) after conviction. (m)

Rescue.

Riot.—If any persons to the number of twelve or more being unlawfully, riotously, and tumultuously assembled together (n) to the disturbance of the

(d) The administration of the drug must be by the defendant: *R. v. Harley*, 4 C. & P. 369; but mere delivery is not sufficient: *R. v. Cadman*, 1 Moo. C. C. 114; *Reid*, 3 Irv. 235; although the defendant need not be present at the time of taking the drug: *R. v. Wilson*, 26 L. J. M. C. 18; *R. v. Farrow*, 1 D. & B. C. C. 164. The drug must be a poison or noxious thing: *R. v. Isaacs*, 32 L. J. M. C. 52; *R. v. Hollis*, 12 Cox C. C. 463; and the offence is complete whether the woman be or be not with child, and may be not with child, and may be committed by the woman herself: *R. v. Goodchild*, 2 C. & K. 293; *R. v. Whitchurch*, 24 Q. B. D. 420; *Webster*, 3 Irv. 95.

(e) The evidence is as in rape, but it is not necessary to negative consent, and both parties, if patient do consent, are equally guilty: *R. v. Wiseman*, Fort. 91; except the patient, if a boy under 14

or if a girl under 12: 1 Hale 670; 3 Inst. 59.

(f) Includes a domestic fowl: *R. v. Brown*, 24 Q. B. D. 357; See *Givern*, 2 Broun 444.

(g) 46 & 47 Vict. c. 51, s. 6; applies to parliamentary elections. See also 2 Will. IV. c. 53, s. 49, as to army; 24 & 25 Vict. c. 98, ss. 3, 34, as to stock, bail, etc.; 28 & 29 Vict. c. 124, s. 8, as to navy; 8 Ed. VII. c. 69, s. 38, as to companies; 33 & 34 Vict. c. 58, s. 4, as to stock certificates; and 37 & 38 Vict. c. 36, s. 1, as to obtaining property by this means. Hume, i. 177.

(h) 7 Will. IV. & 1 Vict. c. 88, s. 2; Hume, i. 481.

(i) 1 Hale, 612; see 1 & 2 Geo. IV. c. 88, s. 1.

(k) 16 Geo. II. c. 31.

(l) 1 Hale, 607; 1. 59 Geo. III. c. 92.

(m) 2 Hawk. c. 21, s. 8.

(n) *R. v. James*, 5 C. & P. 153.

Sect. 1. public peace, and being requested or commanded by any one or more justices of the peace, sheriff, mayor, etc., where such assembly shall be, by proclamation to be made in the King's name . . . to disperse themselves . . . shall to the number of twelve or more, notwithstanding such proclamation, unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request. (o)

If any person do or shall with force and arms wilfully and knowingly oppose, obstruct, or in any manner . . . let, hinder, or hurt any person who shall begin to proclaim or go to proclaim according to the proclamation hereby directed to be made whereby such proclamation shall not be made. (p)

Slaves.

Slaves.—If any subject or subjects of His Majesty, or any person or persons residing or being within any of the dominions . . . of His Majesty, shall upon the high seas or in any haven, river, creek, or place where the admiral has jurisdiction, knowingly and wilfully carry away, convey, or remove or aid or assist in carrying away, etc., any person or persons as a slave or slaves, or for the purpose of his, her, or their being imported or brought as a slave or slaves into any island, colony, country, territory, or place whatsoever, or for the purpose of his, her, or their being sold, transferred, used, or dealt with as a slave or slaves, or shall . . . knowingly and wilfully ship, embark, receive, detain, or confine or assist in shipping, etc., on board any ship, vessel, or boat any person or persons for the purpose of his or their being carried away, conveyed or removed as a slave or slaves, or for the purpose of his, her, or their being imported or brought as a slave or slaves into any island, etc., or for the purpose of his, her, or their being sold, transferred, used, or dealt with as a slave or slaves. (q)

Smuggling.

Smuggling.—If any person maliciously shoot at any vessel or boat belonging to His Majesty's navy or in the service of the revenue, or shall maliciously shoot at, maim, or wound any officer of the army, navy, marines, or coastguard being duly employed in the prevention of smuggling and on full pay, or any officer of customs or excise, or any person acting in his aid or assistance or duly employed for the prevention of smuggling, in the execution of his office or duty. (r)

Stores.

Stores.—If any person with intent to conceal His Majesty's property in any stores takes out, destroys, or obliterates wholly or in part any mark [appropriated for use in such stores], or any mark whatsoever denoting the property of His Majesty in any stores. (s)

Treason.

Treason.—When a man doth compass or imagine the death of our lord the king, or of our lady his queen, or of their eldest son and heir; or if a man do violate the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere (t) . . . and if a man slea the chancellor, treasurer, or the king's justices of the one bench or the other justices in eyre or justices of assize and all other justices assigned to hear and determine being in their places doing their offices. (u)

If any person shall . . . compass, imagine, invent, devise, or intend to

(o) 1 Geo. I. st. 2, c. 5, s. 1.

(p) S. 5; 1. 5 & 6 Vict. c. 28. There must be some sort of resistance to lawful authority: *R. v. Hunt*, 1 Cox C. C. 177; *R. v. Atkinson*, 11, ib. 330. Prosecution must be within twelve months.

(q) 5 Geo. IV. c. 113, s. 9. As to dealing in slaves, see s. 10.

(r) 39 & 40 Vict. c. 36, s. 193. Firing on a pursuing revenue vessel sailing without proper ensign is not within the section: *R. v. Reynolds*, R. & R. 465.

(s) 38 & 39 Vict. c. 25, s. 5.

(t) See *R. v. Lynch*, 1903, 1 K. B. 444.

(u) 25 Ed. III. st. 5, c. 2.

deprive or depose the queen, her heirs or successors . . . or to levy war against Her Majesty, etc., within any part of the United Kingdom in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon or intimidate either house of parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom . . . or any of Her Majesty's dominions . . . and such compassings etc. shall express, utter, or declare by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed. (*w*)

There are statutes which authorize constables to arrest offenders "found committing" any offence against those Acts by such constable. With regard to the meaning of this term, it appears that it must be construed strictly. (*x*) An arrest cannot take place a little time afterwards, (*y*) much less after an interval of two or three hours. (*z*) But an offence may be being committed at a place other than that of its inception, as in the case of a thief still in possession of property recently stolen. In such case he is found committing. (*a*) The statutes in this class are the following:—

As to coinage offences by 24 & 25 Vict. c. 99 (the Coinage Coin. Act, 1861):—

8. Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall export, or put on board any ship, vessel, or boat for the purpose of being exported from the United Kingdom, any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current coin, knowing the same to be false or counterfeit. Exporting counterfeit coin.

9. Whosoever shall tender, utter, (*b*) or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit. Uttering counterfeit gold or silver coin.

10. Whosoever shall tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit, and shall, at the time of such tendering, uttering, or putting off, have in his custody or possession, (*c*) besides the false or counterfeit coin so tendered, uttered, or put off, any other piece of false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, or shall, either on the day of such tendering, uttering, or putting off, or within the space of ten days then next ensuing, tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to be false or counterfeit. Uttering, accompanied by possession of other counterfeit coin, or followed by a second uttering.

11. Whosoever shall have in his custody or possession three or more pieces of false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current gold or silver coin, knowing the same to

Having three or more pieces of counterfeit gold or silver coin in possession, etc., with intent, etc.

(*w*) 11 Vict. c. 12, s. 3.

(*x*) *R. v. Phelps*, C. & M. 180; 1 Russ. Cr. 715.

(*y*) *Simmons v. Millingen*, 2 C. B. 524.

(*z*) *Downing v. Chapel*, L. R. 2 C. P. 461; *Lect v. Hart*, L. R. 3 C. P. 322.

(*a*) *Griffith v. Taylor*, L. R. 2 C. P. D. 194.

(*b*) *R. v. —*, 1 Cox C. C. 250.

(*c*) As to persons acting in concert, see *R. v. Sherrett*, 2 C. & P. 427.

Sect. 11. bo false or counterfeit, and with intent to utter or put off the same or any of them.

Uttering foreign coin, medals, etc., as current coin, with intent to defraud.

13. Whosoever shall, with intent to defraud, tender, utter, or put off, as or for any of the Queen's current gold or silver coin, any coin not being such current gold or silver coin, or any medal or piece of metal or mixed metals, resembling in size, figure, and colour the current coin as or for which the same shall be so tendered, uttered, or put off, such coin, medal, or piece of metal or mixed metals so tendered, uttered, or put off being of less value than the current coin as or for which the same shall be so tendered, uttered, or put off.

Uttering base copper coin.

15. Whosoever shall tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, knowing the same to be false or counterfeit, or shall have in his custody or possession three or more pieces of false or counterfeit coin resembling or apparently intended to resemble or pass for any of the Queen's current copper coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same or any of them. (d)

Defacing the coin by stamping words thereon.

16. Whosoever shall deface any of the Queen's current gold, silver, or copper coin, by stamping thereon any names or words, whether such coin shall or shall not be thereby diminished or lightened.

Penalty for uttering counterfeit coin.

20. Whosoever shall tender, utter, or put off any false or counterfeit coin resembling or apparently intended to resemble or pass for any gold or silver coin of any foreign prince, state, or country, knowing the same to be false or counterfeit.

Second offence of uttering counterfeit foreign coin.

21. Whosoever, having been so convicted as in the last preceding section mentioned, shall afterwards commit the like offence of tendering, uttering, or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit.

Persons counterfeiting foreign coin other than gold and silver coin.

22. Whosoever shall falsely make or counterfeit any kind of coin, not being the Queen's current coin, but resembling or apparently intended to resemble or pass for any copper coin, or any other coin made of any metal or mixed metals of less value than the silver coin, of any foreign prince, state, or country.

Larceny.

The Larceny Act, (e) 1861, extends also to public stores. (f)

Larceny of Deer, etc.

Stealing deer in an uninclosed part of a forest.

12. Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer (g) kept or being in the uninclosed part of any forest, chase, or purlieu.

Suspected persons found in possession of venison, etc., and not satisfactorily accounting for it.

14. If any deer, or the head, skin, or other part thereof, or any snare or engine for the taking of deer, shall be found in the possession of any person or on the premises of any person with his knowledge. (h)

(d) There need be no impression: *R. v. Welsh*, 1 East P. C. 87, 164; 1 Leach C. C. 364; *R. v. Wilson*, *ib.* 285, and genuine money which has been filed is within the sections: *R. v. Hermann*, 4 Q. B. D. 284. Ringing the changes in an uttering: *R. v. Franks*, 2 Leach, 644; *Mooney* 24, Jur. 68; but it is doubtful whether it is so in the case of money given in charity: *R. v. Page*, 8 C. & P. 122; *R. v. —*, 1 Cox 250, and

see *R. v. Ion*, 2 Den. C. C. 475.

(e) 24 & 25 Vict. c. 96.

(f) 38 & 39 Vict. c. 25, s. 12. As to manufacturers, see 6 & 7 Vict. c. 40, s. 9.

(g) Includes a fawn, *R. v. Strange*, Greaves Cr. Stat. 79.

(h) This does not apply to deer usually kept in a forest, killed and carried away outside the limits thereof: *Threlkeld v. Smith*, 1901, 2 K. B. 531.

15. Whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever, for the purpose of taking or killing deer, in any part of any forest, chase, or purlieu, whether such part be inclosed or not, or in any fence or bank dividing the same from any land adjoining, or in any enclosed land where deer shall be usually kept, or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept. **Sect. 15.**
Setting engines for taking deer or pulling down park fences.
17. Whosoever shall unlawfully and wilfully, between the expiration of the first hour after sunset and the beginning of the last hour before sunrise, take (a) or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be inclosed or not, . . . and whosoever shall unlawfully and wilfully, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, take or kill any hare or rabbit in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits, . . . provided, that nothing in this section contained shall affect any person taking or killing in the daytime any rabbits on any sea bank or river bank in the county of Lincoln, so far as the tide shall extend, or within one furlong of such bank. **The like in the daytime.**
Exception.
18. Whosoever shall steal any dog. **Stealing dogs.**
19. Whosoever shall unlawfully have in his possession or on his premises any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen or such skin to be the skin of a stolen dog. **Possession of stolen dogs.**
20. Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof. **Taking money to restore dogs.**
21. Whosoever shall steal any bird, beast, or other animal ordinarily kept in a state of confinement or for any domestic purpose, not being the subject of larceny at common law, or shall wilfully kill any such bird, beast, or animal, with intent to steal the same or any part thereof. **Stealing birds or beasts ordinarily kept in confinement, and not the subjects of larceny.**
22. If any such bird, or any of the plumage thereof, or any dog, or any such beast, or the skin thereof, or any such animal, or any part thereof, shall be found in the possession or on the premises of any person . . . (such person knowing that the bird, beast, or animal has been stolen, or that the plumage is the plumage of a stolen bird, or that the skin is the skin of a stolen beast, or that the part is the part of a stolen animal). **Persons found in possession of stolen birds, etc., liable to penalties.**
23. Whosoever shall unlawfully and wilfully kill, wound, or take any house dove or pigeon under such circumstances as shall not amount to larceny at common law. (k) **Killing pigeons.**
24. Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining (l) or belonging to the dwelling house of any person being the owner of such water, or having a right of fishery therein, . . . and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as herein-before mentioned, but which shall be private property, or in which there shall be any private right of fishery, . . . Provided, that nothing herein-before contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset. **Taking fish in any water situate in land belonging to a dwelling-house; and in a private fishery elsewhere.**
Provision respecting anglers.
26. Whosoever shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or **Dredging for oysters in oyster fisheries.**

(i) See *R. v. Glover*, R. & R. 269.

(k) See *R. v. Brooke*, 4 C. & P. 131.

(l) See *R. v. Hodges*, M. & M. 341.

Sect 26.

Proviso as to
floating fish.

known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall unlawfully and wilfully, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, (*m*) . . . Provided, that nothing in this section contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only.

Of Things Attached to or Growing on Land

Stealing trees,
shrubs, etc.,
wheresoever
growing, and
of any value
above 1s.

Stealing, etc.,
any live or
dead fence,
wooden fence,
stile, or gate.

Snspected per-
sons in posses-
sion of wood,
etc., not satis-
factorily ac-
counting for it.

Stealing, etc.,
any fruit or
vegetable pro-
duction in a
garden, etc.,
punishable on
summary con-
viction for first
offence.

Stealing, etc.,
vegetable pro-
ductions not
growing in
gardens, etc.

Being armed
with intent to
break and
enter any
house in the
night, etc.

33. Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least. (*n*)

34. Whosoever shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale, wire, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively.

35. If the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile, or gate, or any part thereof, being of the value of one shilling at the least, shall be found in the possession of any person, or on the premises of any person, with his knowledge.

36. Whosoever shall steal, or shall destroy or damage with intent to steal, any plant, root, fruit, or vegetable production (*o*) growing in any garden, orchard, pleasure ground, nursery ground, hothouse, greenhouse, or conservatory.

37. Whosoever shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, pleasure ground, or nursery ground. (*p*)

Burglary

58. Whosoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling house or other building whatsoever, and to commit any felony therein, or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key, crow, jack, bit, or other implement of housebreaking, (*q*) or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling house or other building whatsoever with intent to commit any felony therein.

Larceny in Ships, etc.

Persons in pos-
session of ship-
wrecked goods
not giving a
satisfactory
account.

65. If any goods, merchandise, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, shall be found in the possession of any person, or on the premises of any person with his knowledge.

(*m*) S. 3 & 4 Viet. c. 74.

(*n*) I. 25 & 26 Vict. c. 50.

(*o*) Does not include young trees, *R. v. Hodges*, M. & M. 341.

(*p*) S. 13 Geo. III. c. 32. By sect. 5 prosecution must be within thirty days.

(*q*) Or lawful instrument so used: *R. v. Odham*, 3 C. & K. 250.

False Pretences

88. Whosoever shall by any false pretence (*r*) obtain (*s*) from any other person any chattel, money, or valuable security, (*t*) with intent to defraud. (*x*)

False pretences.

89. Whosoever shall by any false pretence cause or procure any money to be paid, or any chattel, or valuable security, to be delivered to any other person, for the use or benefit or on account of the person making such false pretence, or of any other person, with intent to defraud.

Where any money or thing is caused to be paid or delivered to any person other than the person making a false pretence.

Receiving

95. Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanour by this Act, knowing the same to have been unlawfully stolen, taken, obtained, converted, or disposed of. (*y*)

Receiving, where the principal has been guilty of a misdemeanour.

98. Every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under this Act.

Abettors in misdemeanours.

99. Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction.

Abettors in offences punishable on summary conviction.

As to offences against the Malicious Damage Act, 1861, (*z*) the damage done must be more than nominal, and done with intent to damage. (*a*) A trespass can only be wilful and malicious when it is committed by a person who knows he has no pretence of right to enter the land, (*b*) and does not extend to playing bowls on the turf, (*c*) nor to placing poisoned flesh on enclosed land. (*d*)

Malicious damage.

Injuries to Buildings by Rioters, etc.

12. If any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force injure or damage any such (*e*) church, chapel, meeting house, place of divine worship, house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel, fold, building, erection, machinery, engine, staith, bridge, waggonway, or trunk, as is in the last preceding section mentioned. (*e*)

Rioters injuring building, machinery, etc.

(*r*) False representation as to quality is insufficient: *R. v. Bryan*, D. & B. C. C. 265.

(*s*) See *R. v. Kilham*, L. R. 1 C. C. 261; *R. v. Crossley*, 2 M. & R. 17.

(*t*) It includes a railway ticket: *R. v. Boulton*, 19 L. J. M. C. 67; and an order on the treasurer of a building society: *R. v. Greenhalgh*, 6 Cox C. C. 257; but not a dog: *R. v. Robinson*, 28 L. J. M. C. 58. The goods need not be in existence at the time if they are subsequently delivered: *R. v. Martin*, L. R. 1 C. C. R. 56; *Young v. The King*, 3 T. R. 98.

(*x*) *R. v. Jones*, 77 L. T. 503; *Menzies*, 1 Broun, 419.

(*y*) *Dyer*, S. (Inst.), 56.

(*z*) 24 & 25 Vict. c. 97.

(*a*) *Eley v. Lytle*, 50 J. P. 308; *R. v. Pembrilton*, L. R. 2 C. C. 119; see *R. v. Welch*, 1 Q. B. D. 23; and *Hall v. Richardson*, 54 J. P. 345.

(*b*) *Looker v. Halcomb*, 4 Bing. 183; *Usher v. Luzmore*, 62 L. T. 110.

(*c*) *Laws v. Eltringham*, 8 Q. B. D. 283.

(*d*) *Daniel v. James*, 2 C. P. D. 351.

(*e*) S. 52 George III. c. 130. See s. 11, ante, p. 62.

Sect. 13.

To Buildings by Tenants

Tenants of houses, etc., maliciously injuring them.

13. Whosoever, being possessed of any dwelling house or other building, or part of any dwelling house or other building, held for any term of years or other less term, or at will, or held over after the termination of any tenancy, shall unlawfully and maliciously pull down or demolish, or begin to pull down or demolish, the same or any part thereof, or shall unlawfully and maliciously pull down or sever from the freehold any fixture being fixed in or to such dwelling house or building, or part of such dwelling house or building.

To Trees, etc.

Damaging trees, whosoever growing, to the amount of 1s.

22. Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, whosoever the same may be growing, the injury done being to the amount of one shilling at the least.

Destroying any fruit or vegetable production in a garden.

23. Whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any plant, root, fruit, or vegetable production, growing in any garden, orchard, nursery ground, hothouse, greenhouse, or conservatory.

Destroying, etc., vegetable productions not growing in gardens, etc.

24. Whosoever shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, or nursery ground. (f)

To Fences

Destroying, etc., any fence, wall, stile, or gate.

25. Whosoever shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively.

To Ponds and Toll Bars

Breaking down the dam of a fishery, etc., or mill dam, or poisoning fish.

32. Whosoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fish pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, or in any salmon river, (g) with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein, or shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any mill pond, reservoir, or pool.

Destroying a turnpike gate, toll house, etc.

34. Whosoever shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate or toll bar, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate or toll bar, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act of Parliament relating thereto, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll.

(f) S. 13 Geo. III. c. 32; 1. 1 & 2 Will. IV. c. 44.

(g) 36 & 37 Vict. c. 71, s. 13. See *R. v. Vasey*, 1905, 2 K. B. 748.

Sect. 36.

To Railway Carriages and Telegraphs.

36. Whosoever, by any unlawful act, or by any wilful omission or neglect, shall obstruct or cause to be obstructed any engine or carriage using any railway, or shall aid or assist therein. (*h*)

Obstructing engines or carriages on railways.

37. Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure, or remove any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever the sending, conveyance, or delivery of any communication by any such telegraph.

Injuries to electric or magnetic telegraphs.

38. Whosoever shall unlawfully and maliciously, by any overt act, attempt to commit any of the offences in the last preceding section mentioned.

Attempt to injure such telegraphs.

To Works of Art

39. Whosoever shall unlawfully and maliciously destroy or damage any book, manuscript, picture, print, statue, bust, or vase, or any other article or thing kept for the purposes of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or other repository, which museum, gallery, cabinet, library, or other repository is either at all times or from time to time open for the admission of the public or of any considerable number of persons to view the same, either by the permission of the proprietor thereof, or by the payment of money before entering the same, or any picture, statue, monument, or other memorial of the dead, painted glass, or other ornament or work of art, in any church, chapel, meeting house, or other place of divine worship, or in any building belonging to the Queen, or to any county, riding, division, city, borough, poor law union, parish, or place, or to any university, or college or hall of any university, or to any inn of court, or in any street, square, churchyard, burial ground, public garden or ground, or any statue or monument exposed to public view, or any ornament, railing, or fence surrounding such statue or monument.

Destroying or damaging works of art in museums, churches, etc., or in public places.

To Animals, etc.

41. Whosoever shall unlawfully and maliciously (*i*) kill, maim, or wound any dog, bird, beast, or other animal, not being cattle, but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose. (*k*)

Killing or maiming animals.

Other Injuries

51. Whosoever shall unlawfully and maliciously (*l*) commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is herein-before provided, the damage, injury, or spoil being to an amount exceeding five pounds. (*m*)

Persons committing malicious injuries to property not before provided for to an amount exceeding £5.

(*h*) Changing a signal: *R. v. Hadfield*, L. R. 1 C. C. 253; or stopping by holding up one's arms is within the section: *R. v. Hardy*, L. R. 1 C. C. 278.

(*i*) The test appears to be whether the offender *bona fide* believed at the time that what he was doing was necessary for the

protection of property: *Miles v. Hutchings*, 1903, 2 K. B. 714.

(*k*) S. common law: I. see also 14 & 15 Vict. c. 92, s. 1.

(*l*) See *R. v. Pembleton*, L. R. 2 C. C. 119.

(*m*) *R. v. Clemens*, 78 L. T. 204.

Sect. 52.

Persons committing damage to any property, in any case not previously provided for.

Not to extend to certain cases herein named.

Preceding section to extend to injuries to trees.

Making or having gunpowder, etc., with intent to commit, or enable any person to commit, any felony mentioned in this Act.

Abettors in misdemeanors.

Abettors in offences punishable on summary conviction.

Military stores.

52. Whosoever shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is herein-before provided. (n) . . . Provided, that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this Act had not passed.

53. The provisions in the last preceding section contained shall extend to any person who shall wilfully or maliciously commit any injury to any tree, sapling, shrub, or underwood, for which no punishment is herein-before provided.

Making Gunpowder to commit Offences

54. Whosoever shall make or manufacture, or knowingly have in his possession, any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent thereby or by means thereof to commit, or for the purpose of enabling any other person to commit, any of the felonies in this Act mentioned. (o)

56. Every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender.

63. Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction.

Every person who (a.) buys exchanges takes in pawn detains or receives from a soldier or any person acting on his behalf on any pretence whatsoever or (b.) solicits or entices any soldier to sell exchange pawn or give away or (c.) assists or acts for a soldier in selling exchanging pawning or making away with . . . any arms ammunition equipments instruments regimental necessities or clothing or any military decorations of an officer or soldier or any furniture bedding blankets sheets utensils and stores in regimental charge or any provisions or forage issued for the use of an officer or soldier or his horse or of any horse employed in her Majesty's service (p) is also liable.

Night offences. Any one may apprehend persons found committing indictable offences (q) in the night-time. (r) These are:—

Abettors. *Abettors.*—Whosoever shall aid abet counsel or procure the commission of any misdemeanor whether the same be at common law or by statute. (s)

Arms. *Arms.*—Every person who shall be present at or attend [any unlawful assembly for military training] or who shall train or drill any other person to the use of arms etc. or who shall aid or assist therein and every person who shall attend or be present at any such meeting or assembly for the purpose of being so trained or drilled etc. (t)

Assault. *Assault.*—Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person either with or without any weapon or instrument. (u)

(n) See *Roper v. Knott*, 1898, 1 Q. B. 868; *Gayford v. Chouler*, ib. 316.

(o) See *ante*, p. 61.

(p) 44 & 45 Vict. c. 53, s. 156; *Laws v. Read*, 63 L. J. Q. B. 683.

(q) See *ante*, pp. 24, 43.

(r) 9 p.m. to 6 a.m.: 14 & 15 Vict. c. 19, s. 11.

(s) 24 & 25 Vict. c. 94, s. 8.

(t) 60 Geo. III. c. 1, s. 1.

(u) 24 & 25 Vict. c. 100, s. 20.

Whosoever shall attempt to commit [sodomy] or shall be guilty of any assault with intent to commit the same or of any indecent assault on any male person. (x) Sect. 62.

If any person shall assault or resist any constable in the execution of his duty or promote or encourage any other person so to do. (y)

Attempt.—To commit felony. (z)

Attempt.

Child.—Whosoever shall unlawfully abandon or expose any child being under the age of two years whereby the life of such child shall be endangered or the health of such child shall have been or shall be likely to be permanently injured. (a) Child exposure.

Dead body.—Disinterring. (b)

Dead disinterring.

Drivers.—Whosoever having the charge of any carriage or vehicle shall by wanton or furious driving or racing or other wilful misconduct or by wilful neglect do or cause to be done any bodily harm to any person. (c) Drivers.

Entry.—None to make entry into lands and tenements but in case where entry is given by the law and in such case not with strong hand or with multitude of persons but only in peaceable and easy manner. (d) Entry forcible.

Escape.—From lawful custody. (e)

Escape.

Game.—If any person shall by night unlawfully take or destroy any game or rabbits in any land whether open or inclosed or enter or be in any such land with any gun net engine or other instrument for the purpose of taking or destroying game—third offence. (f) Game.

In case such offender shall assault or offer any violence with any gun cross-bow firearms bludgeon stick club or any other offensive weapon whatsoever towards any person hereby authorised to seize and apprehend him. (g)

If any persons to the number of three or more together shall by night unlawfully enter or be in any land whether open or inclosed for the purpose of taking or destroying game or rabbits any of such persons being armed with any gun cross-bow fire-arms bludgeon or any other offensive weapon. (h) And persons unlawfully taking or destroying game or rabbits by night on any public road highway or path or the sides thereof or at the openings outlets or gates from any such land into any such road highway or path. (i)

Housebreaking.—Whosoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever with intent to break or enter into any dwelling-house or other building whatsoever and to commit any felony therein or shall be found by night having in his possession without lawful excuse . . . any picklock key crow jack bit or other instrument of housebreaking or Housebreaking.

(x) S. 62. If the person assaulted consent the indictment cannot be sustained: *R. v. Wollaston*, 12 Cox C. C. 180, unless he be too young to consent in the proper sense of the term: *R. v. Lock*, L. K. 2 C. C. 10.

(y) 1 & 2 Will. IV. c. 41, s. 11; 2 & 3 Vict. c. 93, s. 8; 34 & 35 Vict. c. 112, s. 12; 14 & 15 Vict. c. 19, s. 12.

(z) 14 & 15 Vict. c. 100, s. 9.

(a) 24 & 25 Vict. c. 100, s. 27; *R. v. Falkingham*, L. R. 1 C. C. 222.

(b) *R. v. Lynn*, 2 T. R. 733.

(c) 24 & 25 Vict. c. 100, s. 35.

(d) 5 Ric. II. c. 8; 15 ib., c. 2; 8 Hen. VI. c. 9.

(e) 14 & 15 Vict. c. 100, s. 29.

(f) 9 Geo. IV. c. 69, s. 1.

(g) S. 2. A stone or the fist is *semblé* sufficient within this and the following section: *Ld. Adv. v. Mitchell*, 1 Wh. 321. As to the right of owners and occupiers to kill hares on their lands, see 11 & 12 Vict. cc. 29, 30; and as to rabbits, 23 & 24 Vict. c. 90, s. 5, and 43 & 44 Vict. c. 47.

(h) 9 Geo. IV. c. 69, s. 9. 1. 7 ib. c. 9. All the persons need not have entered the land: *R. v. Whittaker*, 17 L. J. M. C. 127; *R. v. Uzzell*, 20 ib. 192; *R. v. Wood*, 25 ib. 96.

(i) 7 & 8 Vict. c. 29.

- Sect. 58.** shall be found by night having his face blackened or otherwise disguised with intent to commit any felony or shall be found by night in any dwelling house or other building whatsoever with intent to commit any felony therein. (*k*)
- Inciting to commit offence. *Inciting*.—To commit indictable offence. (*l*)
 Indecent exposure. *Indecent exposure*. (*m*)—In a public place. (*n*)
 Nuisance. *Nuisance*.—On highway. (*o*)
 Rescue. *Rescue*.—If any person shall rescue or aid and assist in rescuing from the lawful custody of any constable . . . any person charged with or suspected of or committed for any felony or on suspicion thereof. (*p*)
- Suicide, attempt. *Suicide*.—Attempt to commit. (*q*)
- Hue and cry. A constable concurring in pursuit or hue and cry after an alleged felon is justified in arresting whether the party be innocent or a felony be committed or not. (*r*)
- Indecent exposure. *Indecent exposure*. (*s*)
 Rout. *Rout*.—This is a meeting of three or more persons upon a purpose which if executed would make them rioters and which they actually make a motion to execute. (*t*)
- Smuggling. *Smuggling*.—Persons signalling to smugglers may be arrested and conveyed before a justice. (*u*)
- Wreck. *Wreck*.—Constables are required to assist the receiver in case of wreck. (*x*)
- Entry. *Entry*.—No person shall after sunset and before sunrise between 21st September and 1st April or after eight in the evening and before six in the morning at any other time of the year make aid or assist in making any signal in or on board or from any ship or boat or on or from any part of the coast or shoro for the purpose of giving notice to any person on board any smuggling ship or boat whether any person so on board of such ship or boat be or not within distance to notice any such signal. (*y*) Any person whatsoever may prevent any signal being made as aforesaid and may go upon lands for that purpose. (*z*)
- Taxes. It is the duty of constables . . . when so required to aid and assist the collector [of taxes] in the execution of a warrant [of

(*k*) 24 & 25 Vict. c. 96, s. 58; *R. v. Oldham*, 2 Den. C. C. 472.

(*l*) *R. v. Higgins*, 2 East 5.

(*m*) See 14 & 15 Vict. c. 100, s. 29; S. common law.

(*n*) It is not necessary that the place be open to the public: *R. v. Thallman*, 33 L. J. M. C. 58; and they may even be trespassers: *R. v. Wellard*, 14 Q. B. D. 63. But it must take place in the presence of more than one person: *R. v. Webb*, 18 L. J. M. C. 39; *R. v. Watson*, 2 Cox C. C. 376. But see *R. v. Elliott*, L. & C. 103, and as to baths 41 & 42 Vict. c. 14, s. 11. An omnibus, *R. v. Holmes*, 6 Cox C. C. 216; a urinal, *R. v. Harris*, L. R. 1 C. C. 282,

and a booth at races, *R. v. Saunders*, 1 Q. B. D. 15, is a place, and bathing without covering is an offence: *R. v. Reed*, 12 Cox C. C. 1; *R. v. Crunden*, 2 Camp. 89.

(*o*) *R. v. Botfield*, C. & M. 151.

(*p*) 1 & 2 Geo. IV. c. 88, s. 1.

(*q*) *R. v. Burgess*, L. & C. 258.

(*r*) Hawk. P. C. 62; 50 & 51 Vict. c. 55, s. 8. S. 1662, c. 6.

(*s*) See *supra*.

(*t*) 4 Black, 146.

(*u*) See 39 & 40 Vict. c. 36, s. 192, *inf*.

(*x*) 57 & 58 Vict. c. 60, s. 514.

(*y*) 39 & 40 Vict. c. 36, s. 190.

(*z*) S. 192.

distress for non-payment of taxes] and in levying the distress in the house or premises. (a)

Metropolitan.—These constables employed under the Dock-^{Metropolitan.} yard Acts (b) have no right to demand entrance to a licensed house to search for absentees from the navy. (c)

Search.—There is no statutory power to search a person on^{Search.} his arrest and it is not certain that there is such power at common law. In practice however a person apprehended for felony is searched as well as the room or lodging where he is taken or happens to be living. (d) In the latter case a warrant seems necessary.

Seizure and Detention.—Where a person is arrested for felony^{Seizure and detention.} or misdemeanour any property in his possession believed to have been used by him for the purpose of committing the offence may be seized and detained as evidence, and if necessary may be taken from him by force provided no unnecessary violence is used (e).

By the Children Act, 1908, 8 Ed. VII. c. 67, it is provided—^{Children.}

S. 95. Where a person apparently under the age of sixteen years having been^{Custody of children and young persons not discharged on bail after arrest.} apprehended is not so released [on bail] as aforesaid, (f) the officer of police shall cause him to be detained in a place of detention provided under this Part of this Act until he can be brought before a court of summary jurisdiction, unless the officer certifies—

- (a.) that it is impracticable to do so; or
- (b.) that he is of so unruly a character that he cannot be safely detained; or
- (c.) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him;

and the certificate shall be produced to the court before which the person is brought.

96. It shall be the duty of the police authority to make arrangements for^{Association with adults, during detention in police stations.} preventing, so far as practicable, a child or young person while being detained in a police station from associating with an adult, other than a relative, charged with an offence. (f)

If any person shall find or discover in any place whatsoever or in the custody^{Coin.} or possession of any person having the same without lawful authority or excuse any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the queen's current gold silver or copper coin or any coin of any foreign prince state or country or any instrument tool or engine whatsoever adapted and intended for the counterfeiting of any such coin or any filings or clippings or any gold or silver bullion or any gold or silver in dust solution or otherwise which shall have been produced or obtained by diminishing or

(a) 43 & 44 Vict. c. 19, s. 86.

(b) 23 & 24 Vict. c. 135.

(c) *Turner v. Ford*, 37 L. T. 352.

(d) *Dillon v. O'Brien*, 16 Cox C. C. 245.

See Macdonald Cr. L.

(e) *Ib.* and see *Tyler v. L. & S. W. Railway*, 1 C. & E. 285; *Warne v. Varley*, 6 T. R. 443; *Mauchline v. Stevenson*, 5 R. 21.

(f) See also s. 20, *ante*, p. 45.

- Sect. 27.** lightening any of the queen's current gold or silver coin . . . he is hereby required to seize the same and to carry the same forthwith before some justice of the peace. *(g)*
- Customs.** If any . . . goods liable to duties of customs or prohibited to be imported or in any way restricted shall be stopped or taken by any police officer on suspicion that the same had been feloniously stolen, he may carry the same to the police office to which the offender if detained is taken there to remain until and in order to be produced at the trial of such offender . . . if the offender be not detained or if detained immediately after the trial . . . such officer shall convey to and deposit the goods in the nearest custom warehouse. *(h)*
- Excise.** All goods or commodities whatsoever which are or shall be prohibited or . . . subject to any duty or duties of excise *(i)* and which shall be stopped detained or taken by any police officer . . . under or by virtue of any Act or Acts of Parliament or . . . under any other authority whatsoever shall be conveyed . . . to and deposited and lodged in the chief office of excise if the same shall have been stopped detained or taken within the limits of the chief office, or in the nearest office of excise if in any other part of the United Kingdom. *(k)*
- Wreck.** If any person shall offer or expose for sale any government merchandize or articles whatsoever which shall have been unlawfully taken or shall be reasonably suspected so to have been taken from any ship or vessel in distress or wrecked stranded or cast on shore . . . any officer of the customs or excise or peace officer may lawfully seize the same and shall with all convenient speed carry the same or give notice of such seizure to some justice of the peace. *(l)*

GAOLERS

- Gaolers.** These officers have while in the execution of their duties the same powers authorities protection and privileges as constables. *(m)*
- Criminal prisoners.** As to criminal prisoners no cell is to be used for the separate confinement of a prisoner unless certified to be fit by the inspector and furnished with the means of enabling the prisoner to communicate at any time with an officer. *(n)*
- Punishment.** The gaoler can only order confinement in a punishment-cell for twenty-four hours. Punishments can only be awarded by the gaoler or a justice. *(o)*
- Removal.** Prisoners may be brought up for trial or removed. *(p)*

(g) 24 & 25 Vict. c. 99, s. 27.

(h) 39 & 40 Vict. c. 36, s. 206.

(i) On notice of any tobacco being set, planted improved to grow made cured either in seed plant or otherwise in or upon any ground earth field or place or otherwise in the United Kingdom they (sheriffs and other officers) shall within ten days cause the same to be burnt plucked up consumed or utterly destroyed. Not to extend to planting of tobacco in any physic garden of either university or in any other private garden

for physic or chirurgery only; but so as the quantity so planted exceed not a half pole in any one place or garden: 12 Car. II. c. 34, ss. 2, 4.

(k) 7 & 8 Geo. IV. c. 53, s. 108.

(l) 24 & 25 Vict. c. 96, s. 66.

(m) 61 & 62 Vict. c. 41, s. 10.

(n) 28 & 29 Vict. c. 126, s. 18; 61 & 62 Vict. c. 41, s. 2. In S. & I. these matters are dealt with by rules.

(o) 28 & 29 Vict. c. 126, s. 43; 61 & 62 Vict. c. 41, ss. 5, 7.

(p) 28 & 29 Vict. c. 126, s. 63.

CUSTOMS

The powers of customs officers are derived mainly from the Customs Acts 1876 and the Acts amending the same which together form a code. They are therefore here set out as they appear in those Acts.

By the Customs Tariff Act, 1876—(g)

1. In lieu and instead of all other duties of Customs and drawbacks there shall, on and after the passing of this Act, be raised, levied, collected, and paid unto Her Majesty, her heirs and successors, upon goods imported into and exported from any part of Great Britain or Ireland, the several duties of Customs, and there shall be allowed the several drawbacks, as the same are respectively inserted, described, and set forth in the Table of Duties of Customs to this Act annexed and all other provisions contained in the Customs Acts, and in force at the time of the passing of this Act, shall, so far as the same are applicable, have full force and effect with respect to the said duties and drawbacks granted and allowed by this Act.

Instead of all other duties and drawbacks of Customs, those in table annexed to be paid and allowed.

SCHEDULE

TABLE OF DUTIES OF CUSTOMS

	£	s.	d.
Cards, playing, the dozen packs	-	-	0 3 9
Chicory	-	-	-
Raw, or kiln dried	-	-	the cwt. 0 13 3
Roasted or ground	-	-	the lb. 0 0 2
Chloral hydrate	-	-	the lb. 0 1 3
Cocoa	-	-	the lb. 0 0 1
Husks and shells	-	-	the cwt. 0 2 0
Coffee	-	-	the cwt. 0 14 0
Kiln dried, roasted, or ground (r)	-	-	the lb. 0 0 2
Figs	-	-	the cwt. 0 7 0
Fig cake	-	-	the cwt. 0 7 0(s)
Plums, commonly called French plums and pruneloes	-	-	the cwt. 0 7 0
Dried or preserved (except in sugar) not otherwise described	-	-	the cwt. 0 7 0
Prunes	-	-	the cwt. 0 7 0
Raisins	-	-	the cwt. 0 7 0 (t)
Tobacco, manufactured:			
Tobacco, unmanufactured:			

(g) 39 & 40 Vict. c. 35.
 (r) 60 & 61 Vict. c. 24, s. 2.
 (s) As to glucose, 2 Ed. VII. c. 7, s. 6; and molasses, 3 Ed. VII. c. 46, s. 1.
 (t) As to saccharin, 1 Ed. VII. c. 7, s. 8; spirits, 53 & 54 Vict. c. 8, s. 4; sugar, 1 Ed. VII. c. 7, s. 2; and tea, 2 Ed. VII. c. 7, s. 2.

Provided that no tobacco packed and prized shall, on the importation thereof, be examined as to the quantity of moisture contained therein except by special order of the Commissioners of Customs, and unmanufactured tobacco shall on the entry thereof be distinguished as stemmed or unstemmed, as the case may be. (u)

Wine, (x)

Ten per cent. of proof spirit may be used in the fortifying of any wine in bond, provided that the wine so fortified be not thereby raised to a greater degree of strength than forty per cent. of such proof spirit, if for home consumption.

Goods not prohibited to be imported into or used in Great Britain or Ireland, composed of any article liable to duty as a part or ingredient thereof, shall be chargeable with the full duty payable on such article, or if composed of more than one article liable to duty, then with the full duty payable on the article charged with the highest rate of duty.

Upon the importation into Great Britain and Ireland of any articles in the manufacture of which spirit is used, there shall be charged in respect of such quantity of spirit as shall appear to the satisfaction of the Treasury to be used in the manufacture of such articles, a duty equivalent to that which would be chargeable on the like quantity of spirit on its importation into the United Kingdom.

There shall be charged upon the delivery of the following goods from any warehouse for home consumption, in addition to the duties of Customs and any other charges thereon, for every one hundred pounds of such duties of Customs payable thereon, the rates following; that is to say,

	£	s.	d.
In respect of tobacco - - -	0	2	6
In respect of other goods - - -	0	5	0

whether such tobacco or other goods shall have been removed to such warehouse under bond or not.

All goods derelict, jetsam, flotsam, and brought or coming into the United Kingdom, and all droits of Admiralty sold in the United Kingdom, shall be subject and charged with the same duties as are chargeable on the like kinds of goods on importation into the United Kingdom.

By the Customs Consolidation Act, 1876—(y)

Persons employed on service of the Customs to be deemed officers for such service.

4. Every person employed on any duty or service relating to the Customs trade, or navigation, either in the United Kingdom, the Channel Islands, or any of Her Majesty's possessions abroad, by the orders or with the concurrence of the Commissioners of Customs (z) (whether previously or subsequently expressed), shall be deemed to be the officer for that duty or service; and every Act required by law at any time to be done by or with any particular officer nominated for such purpose, if done by or with any person appointed by the Commissioners of Customs to act for such particular officer, shall be deemed to be done by or with such particular officer; and every act required

(u) See 26 & 27 Vict. c. 7, *post*, p. 210.

(x) 49 & 50 Vict. c. 41, s. 1.

(y) 39 & 40 Vict. c. 36. By s. 14 of 42 & 43 Vict. c. 21, ss. 6, 7, 8, 9, 10 and 13 of that Act are incorporated with this Act, and are respectively substituted for ss. 63, 120, 138, 144, 188 and 278 of

this Act. By s. 13 of 44 & 45 Vict. c. 12, ss. 5, 6, 9, 10, 11 and 12 of that Act are incorporated with this Act, and the said ss. 9, 10, 11 and 12 are respectively substituted for ss. 48, 143, 110 and 184 of this Act.

(z) And Excise.

by law to be done at any particular place within any port, if done at any place within such port appointed by the Commissioners of Customs for such purpose, shall be deemed to be done at the particular place so required by law.

Sect. 4.

10. Every order, document, or instrument required by law to be under the hands of the Commissioners of Customs but not required to be signed by two or more of them, being attested by the signature of any one of such Commissioners, and every order, document, or instrument required by any law to be under the hands or under the hands and seals of the Commissioners of Customs, being attested by the hands or the hands and seals of two or more of such Commissioners, shall be deemed to be an order, document, or instrument under the hands, or under the hands and seals, as the case may be, of the Commissioners of Customs.

What shall be deemed orders, etc., of Commissioners of Customs.

As to the Appointment of Ports, Quays, Warehouses, Sufferance Wharves, Landing and Boarding Stations

Appointment of ports, etc.

11. The Commissioners of the Treasury may, by their warrant, appoint any port, sub-port, haven, or creek in the United Kingdom or in the Channel Islands, and declare the limits thereof, and appoint proper places within the same to be legal quays for the landing and unlanding of goods, and declare the bounds and extent of any such quays, and annul the limits of any port, sub-port, haven, creek, or legal quay already appointed or to be hereafter set out and appointed, and declare the same to be no longer a port, sub-port, haven, creek, or legal quay, or alter or vary the names, bounds, and limits thereof: Provided always, that when by any such warrant the pre-existing limits of any port, sub-port, haven, creek, or legal quay shall be altered or varied, the same shall not affect or abridge any lawful rights or privileges co-extensive with such pre-existing limits (irrespective of matters relating to Her Majesty's Customs) granted to any person or body of persons by any Act of Parliament, grant, or other legal instrument, but they shall be deemed to be and remain the same for the purposes of such Act, grant, or other legal instrument as if no such alteration or variation had been made: Provided, that any port so appointed by warrant as aforesaid shall, to the whole extent of the limits thereof, be deemed to be a port within the meaning and for the purposes of the Act of fifty-four George the Third, chapter one hundred and forty-nine, and of any other Public Act for the protection of the ports, harbours, shores, and navigable rivers of the United Kingdom or any part thereof.

Treasury may appoint ports and quays, and alter or vary the limits.

12. The Commissioners of the Treasury may, by their warrant, from time to time appoint the ports and inland bonding places in the United Kingdom which shall be warehousing ports or places for the purposes of the Customs Acts, in addition to those already appointed; and, subject to their directions, the Commissioners of Customs may by their order from time to time approve (a) and appoint warehouses or places of security in such ports or places, and direct in what different parts or divisions of such warehouses or places, and in what manner, any goods and what sort of goods may, and may only, be warehoused, kept, and secured without payment of duty upon the first entry thereof or for exportation only, in cases where the same may be prohibited to be imported for home use; and the Commissioners of Customs may also fix the amount of rent which shall be payable in respect of any goods deposited or secured in any of

Treasury may appoint warehousing ports or places, and warehouses, etc.

(a) On revocation the duties to be paid or the goods exported or removed to another warehouse within such time, not

less than three months, as commissioners may direct: 45 & 46 Vict. c. 72, s. 2.

Sect. 12.

the Queen's warehouses; and all such sums shall be paid, received, appropriated as moneys not duties of Customs.

Warehouse-keeper to give security.

13. The proprietor or occupier of every warehouse so approved (except existing warehouses of special security, in respect of which security by bond has hitherto been dispensed with), or someone on his behalf, shall, before any goods shall be warehoused therein, give or procure to be given security by bond, or such other security as the Commissioners of the Treasury or Customs may approve, for the payment of the full duties chargeable on any goods which shall at any time be warehoused in any warehouse duly approved by them for that purpose, or for the due exportation thereof.

Commissioners may appoint stations and regulate discharge of cargo, etc.

14. The Commissioners of Customs may from time to time, by order under their hands, appoint in the United Kingdom or the Channel Islands stations or places for ships arriving at or departing from any port or place to bring to for the boarding or landing of officers of the Customs, and may also appoint places to be sufferance wharves for the lading and unlading of goods, in such cases, under such restrictions, and in such manner as they shall see fit; and may also direct at what particular part or parts of any harbour, dock, quay, or other place in any such port ships laden with tobacco or any particular cargo shall moor or discharge such cargo; and the Commissioners of Customs, or the collector or other proper officer of any such port, may station officers on board any ship while within the limits of any port.

Power to revoke orders.

15. The Commissioners of the Treasury and the Commissioners of Customs may from time to time revoke or alter any such warrant or order made by them respectively.

Commissioners may order in what ports goods may be carried or water-borne by authorized persons.

16. The Commissioners of Customs may order and direct in what ports or places in the United Kingdom goods cleared for drawback or from the warehouse shall be carried or water-borne to be put on board any ship for exportation, and goods carried or water-borne from any importing ship to, or to be landed at, any wharf, quay, or other place, and such goods shall be so carried or water-borne only by persons authorised for that purpose by license under the hands of the Commissioners of Customs, who may revoke any such orders or directions, or make others in lieu thereof, when and as they may deem expedient; and may grant such licenses in such form and manner and to such persons as they may deem proper, and may revoke the same when and as they shall think fit; and before granting any such license may require such security, by bond or otherwise, for the faithful and incorrupt conduct of such person, as they shall deem necessary.

Collection of duties, etc.

As to the Collection and Management of Duties of Customs, Drawbacks, and Allowances

Duties, drawbacks, etc., to be under the management of the Commissioners.

17. All duties of Customs or other duties, rates, and charges under the management, collection, or control of the Commissioners of Customs, and all drawbacks and allowances now imposed and allowed, or which may hereafter be imposed or allowed by law, shall be under the management of the Commissioners of Customs for the time being and shall be ascertained raised levied collected paid recovered allowed and applied or appropriated under the provisions of the laws for the time being in force relating thereto; and all duties rates charges and drawbacks imposed and allowed according to any specified quantity or any specified value shall be deemed to apply in the same proportion to any greater or less quantity or value, and shall be paid and received in every part of the United Kingdom in British currency, and according to imperial weights and measures.

18. In all cases where any new duties of Customs or other duties, rates, or charges under the management collection or control of the Commissioners of Customs are or may be imposed by any Act of Parliament, or by any resolution of the House of Commons, in lieu of any duties payable at the time of the passing of such Act, such former duties shall be and continue payable until such new duties imposed in lieu thereof shall become chargeable, save and except in cases where the Act or resolution imposing such new duties shall otherwise provide; and all moneys arising from any duties of Customs, rates, or charges, or any arrears thereof, payable on account of any goods whatever imported into or exported from the United Kingdom under any former Act, although computed under such former Act, and whether secured by bond or otherwise, shall be levied, paid, and appropriated in the same manner as if the same had been made payable by this or any other Act in force for the time being; and all drawbacks or allowances payable under any former Act shall be paid or allowed under this or such other Act as may be in force for the time being.

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When new duties of Customs are imposed former ones to continue until the new become chargeable, except in certain cases.

19. All goods deposited in any warehouse or place of security under any Act for the warehousing of goods, without payment of duty upon the first importation thereof, or which may be imported and on board any ship, shall, upon being entered for home consumption, be subject to such and the like duties as may at the time of passing such entry be due and payable on the like sort of goods under any Customs Acts in force at the time of passing such entry, save and except in cases where special provision shall be made by such Act to the contrary. (b)

Duties on goods in warehouse, when entered for home consumption.

(b) By 11 & 12 Vict. c. 122, s. 26 (the Bonded Warehouses Act, 1848). Before any goods which are subject to any regulations of excise are removed from any warehouse or place in which they are deposited for security of the duties of customs, the party intending to remove the same shall, on making due entry thereof for home consumption, deliver to the collector or controller of customs one certificate or duplicate of such original entry in case the whole of the goods included in such original entry are intended to be removed into the stock custody or possession of any one party, or in case it be intended to remove such goods into the stock custody or possession of two or more parties, then the party making such entry shall deliver to the collector or controller two or more certificates or duplicates as the case may require; and each such certificate or duplicate shall contain such particulars, and be arranged in such form and manner as the collector and controller may require; and such certificate or certificates, duplicate or duplicates, as the case may be, shall be annexed to and retained with the original entry until application be made for the removal of such goods, whereupon the proper officer of customs shall in respect of such removal indorse on the certificate or duplicate relating thereto the marks numbers and contents of the casks and packages so intended to be removed; and also if any of such packages contain spirits the degree of strength per cent. thereof; and the party applying for such removal

shall indorse on the certificate or duplicate relating thereto the name and address of the person to whom or into whose stock custody or possession such goods are intended to be removed; and at the time of delivery of such goods for removal the proper officer of customs shall indorse on such certificate or duplicate the day and hour of delivery and sign his name thereto, and shall then deliver such certificate or duplicate to the party applying for the removal of such goods in order that the same may accompany such goods into the stock custody or possession of the party whose name and address is indorsed on such certificate; and no such goods accompanied by such certificate or duplicate on removal thereof direct from the warehouse to the party whose name and address is indorsed on such certificate or duplicate shall be liable to seizure or forfeiture, or the party removing or receiving the same to any penalty for or by reason of such goods not being accompanied by a permit provided such goods be conveyed within a reasonable time after the date of delivery thereof direct from the warehouse to or into the stock property or possession of the party whose name and address is indorsed on such certificate; and every person removing or receiving such goods without such certificate accompanying the same as aforesaid . . . shall be subject and liable to the same rules regulations penalties and forfeitures in respect of such certificate as such person is subject and liable to under and by virtue of any

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Payment of
debentures,
etc., in London
and other
ports.

25. . . . The Commissioners of Customs are hereby authorized to return any money which shall have been overpaid as duties of Customs, at any time within six years after such overpayment, on its being proved to their satisfaction that the same was overpaid in error; but no such return shall be allowed unless the claim for the same shall have been made and established within such period of six years.

Overpayments.

Disputes be-
tween importers
and officers.

As to Disputes between the Importers and Officers of Customs respecting the Duties of Customs

Deposit by im-
porter, in case
of dispute, of
duty de-
manded.

30. If any dispute shall arise as to the proper rate of duty payable on any goods admissible for home consumption, the importer or consignee, or his agent, shall deposit in the hands of the collector of the Customs at the port of importation the duty demanded by such collector, which shall be deemed and taken to be the proper duty payable, unless an action or suit shall be commenced by the importer within three months after such deposit in one of Her Majesty's courts of law at Westminster, Dublin, or Edinburgh against such collector, to ascertain whether any and what duty is payable on such goods; and, on payment of such deposit, and on the passing of a proper entry for such goods by the importer, consignee, or agent, such collector shall cause delivery thereof.

Application of
deposits.

31. . . . In case of such action or suit, if it shall be determined that the duty so deposited was not the proper duty, but that a less duty was payable, the difference between the deposit and the duty found to be due, or the whole deposit, as the case may require, shall be returned to such importer, with interest thereon after the rate of five pounds per centum per annum for the period during which the sum so paid or returned shall have been deposited; and shall be accepted by such importer in satisfaction of all claims in respect of the importation of such goods and the duty payable thereon, and of all or any damages and expenses incident thereto.

Complaints, etc.

As to Complaints, Disputes, and Inquiries

Disputes and
inquiries in
London.

32. If in the port of London any dispute shall arise between any merchants or other persons and any officer of Customs as to the seizure or detention of any ship or goods, or as to any apparently accidental omission, inadvertency, or noncompliance with the laws and regulations relating to the Customs, the Commissioners may determine such dispute as they may deem just, and if they find that penalty or forfeiture has been incurred they may mitigate or remit the same.

Power of party
aggrieved to
state case per-
sonally, or
claim inquiry.

33. In case any merchant or other person who shall feel himself aggrieved by the determination of the Commissioners of Customs, or have any complaint against any officer of Customs as to anything done or omitted by him in or about the execution of his duty, the party so aggrieved or complaining shall be desirous of stating his case personally to one of the Commissioners of Customs, he may do so on application to the Board during the official hours of attendance at the Custom House, or if he prefer it, may on application in writing to the Commissioners of Customs, stating therein his grievance or complaint, have the same inquired into by one of the said Commissioners, who shall hear the matter in the presence of the parties, and of any persons interested or desirous of attending; and such Commissioner shall take any evidence on oath which may

act or acts of Parliament relating to the revenue of excise for or by reason of his removing or receiving the like goods with

a true and lawful permit accompanying the same or removing or receiving the same without such permit.

be tendered on such inquiry, reducing the same into writing in a narrative form, and shall lay the same, with his opinion thereon, before the Commissioners of Customs for their consideration; and such Commissioner shall have the same power and authority for enforcing order during such inquiry as is vested in justices of the peace in petty sessions. Sect. 33.

34. The Commissioners of Customs, upon such evidence and opinion, shall, by order under the hands of any two of them, either decide the case, or direct a prosecution if they see fit; and such decision, in case any penalty or forfeiture shall be adjudged thereby, shall have the same force and effect as a legal conviction for penalties by a justice of the peace; and a copy of such order shall be served upon the person adjudged to pay such penalty or forfeiture, either personally or by post, or by leaving the same at his last known place of abode or business; and in case of nonpayment thereof within one week after such service, unless he shall have given notice in writing to the Commissioners of Customs or their solicitor of his refusal to abide by such order, and upon the production of such order to any justice of the peace he shall enforce the same in such manner as justices are empowered by law to enforce penalties lawfully imposed by them; but if such person shall give such notice in writing to the Commissioners of Customs or their solicitor, they may direct such proceedings thereon as they may see fit, or the party against whom such order shall have been made shall have the same remedy by action at law as if no such order had been made. Commissioners to prosecute or decide.

35. In case of any such dispute at any of the outports, the like inquiry shall be held by any collector or other person deputed for that purpose by the Commissioners of Customs, in the same manner in all respects, and with the like authority for maintaining order, as herein-before provided with reference to inquiries in the port of London. Disputes and inquiries at outports.

36. Whenever the Commissioners of Customs shall direct any inquiry as to any matter under their management, or as to the conduct of any person employed therein such inquiries may be held by the Commissioners for the time being, or by any one or more of them, or by any person deputed by them either specially for holding any particular inquiry or generally for holding such inquiries; and if on any such inquiry the person holding the same shall require the evidence of any witness on oath, he is hereby authorised and empowered to administer such oath; . . . Holding of inquiries.

37. Upon any such inquiry it shall be lawful for the Commissioners of Customs, or any one of them, or other person so deputed to hold the same, to summon from any part of the United Kingdom any person required as a witness on such inquiry to attend on the hearing thereof, then and there to give evidence upon oath touching the matter of such inquiry, or otherwise in relation thereto; . . . Power to summon witnesses.

38. The Commissioners of Customs shall from time to time make such rules and orders for the conduct of such inquiries as they may deem expedient. Rules for conduct of inquiries.

As to the Importation, Prohibition, Entry, Examination, Landing, and Warehousing of Goods Importation.

39. It shall be lawful to import into the United Kingdom any goods which are not by this or any law in force at the time of importation thereof prohibited to be so imported, and to warehouse under the laws in force for the warehousing of goods, except as herein-after provided, in warehouses duly approved for the warehousing of goods, without payment of duty on the first entry thereof, any Importation and prohibition.

Sect. 39. goods subject to duties of Customs the importation and warehousing whereof is not prohibited by any law in force at the time of such importation: Provided, always, that the duties on such goods as the Commissioners of the Treasury may from time to time enumerate shall be paid on the first importation thereof, and such goods shall not be warehoused either for home consumption or exportation.

Time of importation of goods and time of arrival of ships defined.

40. If upon the first levying or repealing of any duty, or the first permitting or prohibiting any importation, or at any other time, or for any of the purposes of the Customs Acts, it shall become necessary to determine the precise time at which an importation of any goods shall be deemed to have had effect, such time shall be deemed to be the time at which the entry of the goods under the Customs Act is delivered; (c) and if any question shall arise upon the arrival of any ship in respect of any charge or allowance for such ship, exclusive of cargo, the time of such arrival shall be deemed to be the time at which the report of such ship shall have been or ought to have been made.

Importation direct.

41. No goods shall be deemed to be imported from any particular place unless they be imported direct from such place, and shall have been there laden on board the importing ship, either as the first shipment of such goods, or after the same shall have been actually landed at such place.

Prohibitions and restrictions.

42. The goods enumerated (d) and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, (e) and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS (f)

Goods prohibited to be imported (g)

Table of prohibitions and restrictions.

Books wherein the copyright shall be first subsisting, first composed, or written or printed, in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such copyright subsists, such notice also stating when such copyright will expire.

Books first published in any country or state other than the United Kingdom, wherein under the International Copyright Act, 1886, or any other Act or any order in council made under the authority of any Act, there is a subsisting copyright in the United Kingdom, printed or reprinted in any country or state other than the country or state in which they were first published, and as to which the owner of the copyright or his agent in the United Kingdom has given to the Commissioners of Customs in the manner prescribed by section 44 of the Customs Consolidation Act, 1876, a notice

(c) 1 Ed. VII. c. 7, s. 7.

(d) These are to include all articles bearing or having affixed to them any stamp name writing or other device implying or tending to imply any sanction or guarantee by the customs or by any other department of government: 42 & 43 Vict. c. 21, s. 5.

(e) See *Smyth v. Reynolds*, 2 Wils. 257;

Wilson v. Saunders, 1 B. & P. 267; *Att.-Gen. v. Delano*, 6 Price 383.

(f) As to destructive insects and pests, see 40 & 41 Vict. c. 68, s. 1, and 7 Ed. VII. c. 4. And as to foreign postal packages, 45 & 46 Vict. c. 74, s. 14.

(g) The importation of animals is dealt with by Orders in Council.

in such form and giving such particulars as those Commissioners require, and accompanied by a declaration as provided in that section. (*h*)

Coin, viz. false money or counterfeit sterling.

Coin, silver, of the realm, or any money purporting to be such, not being of the established standard in weight or fineness. (*i*)

Explosives within the meaning of the Explosives Act, 1875, on the unloading or loading of which any restriction is imposed by or in pursuance of that Act, and all explosive substances within the meaning of the Explosive Substances Act, 1883, which are forfeited under that Act. (*k*)

Extracts, essences, or other concentrations of . . . coffee, chicory, tea, or tobacco, or any admixture of the same, except in transit, or to be warehoused for exportation only.

Goods proved . . . to have been made or produced wholly or in part in any foreign prison gaol house of correction or penitentiary except goods in transit or not imported for the purposes of trade or of a description not manufactured in the United Kingdom. (*l*)

Indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engravings, or any other indecent or obscene articles.

Any advertisement or other notice of or relating to the drawing or intended drawing of any lottery which in the opinion of the Commissioners is imported for the purpose of publication in the United Kingdom in contravention of the Lotteries Act, 1836, or any other Act relating to foreign lotteries. (*m*)

Goods which if sold would be liable to forfeiture under the Merchandise Marks Act 1887 and also all goods of foreign manufacture bearing any name or trade-mark being or purporting to be the name or trade-mark of any manufacturer dealer or trader in the United Kingdom unless such name or trade-mark is accompanied by a definite indication of the country in which the goods were made or produced. (*n*) Goods so liable to forfeiture are those to which any forged trade-mark or false trade description (*o*) is applied, or to which any trade-mark or mark so nearly resembling a trade-mark as to be calculated to deceive is falsely applied. (*p*)

Fictitious stamps (*q*) and any die plate instrument or materials for making any such stamps. (*r*)

(*h*) 52 & 53 Vict. c. 42, s. 1.

(*i*) As to foreign coin, 49 & 50 Vict. c. 41, s. 2. And imitation coin, 52 & 53 Vict. c. 42, s. 2, i.e. (*a*.) any piece of gold silver copper or bronze or of metal or mixed metal purporting to be a British coin or a token for British money or bearing any word or device which indicates or may reasonably be taken to indicate that the holder thereof is entitled to demand any value in British money denoted thereon, and (*b*.) any medal cast coin or other like thing made wholly or partially of metal or any metallic combination and resembling in size figure and colour any British coin or having thereon a device resembling any device on any British coin or being so formed that it can by gilding silvering colouring washing or other like process be so dealt with as to resemble any British coin. (*4*) In this section the expression "British coin" means any coin coined in or for any of Her Majesty the Queen's mints or lawfully current by

virtue of any proclamation or otherwise in any part of Her Majesty's dominions whether within the United Kingdom or otherwise and the expression "British" means money expressed in the terms of any British coin.

(*k*) 46 & 47 Vict. c. 10, s. 3; see *ante*, p. 62, and *post*, p. 378.

(*l*) 60 & 61 Vict. c. 63.

(*m*) 61 & 62 Vict. c. 46, s. 1.

(*n*) 50 & 51 Vict. c. 28, s. 16.

(*o*) 54 & 55 Vict. c. 15, s. 1; *Wood v. Burgess*, 24 Q. B. D. 162.

(*p*) 50 & 51 Vict. c. 28, ss. 2, 3. As to watches, see s. 7. And see *Lipton v. The Queen*, 32 L. R. Ir. 115.

(*q*) Any facsimile or imitation or reference whether on paper or otherwise of any stamp for denoting any rate of postage including any stamp for denoting a rate of postage of any of His Majesty's colonies or of any foreign country; 8 Ed. VII. c. 48, s. 65.

(*r*) 61 & 62 Vict. c. 46, s. 1.

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- (a.) Margarine or margarine-cheese, except in packages conspicuously marked "margarino" or "margarine-cheese," as the case may require or
- (b.) Adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the milk or cream has been so treated or
- (c.) Condensed separated or skimmed milk except in tins or other receptacles which bear a label whereon the words "machine-skimmed milk," or "skimmed milk" as the case may require are printed in large and legible type or
- (d.) Any adulterated or impoverished article of food to which His Majesty may by Order in Council direct that this section shall be applied, unless the same be imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated (s) or
- (e.) Butter containing more than 16 per cent. of water.
- (f.) Margarine containing more than 16 per cent. of water, or more than 10 per cent. of butter fat.
- (g.) Milk-blended butter containing more than 24 per cent. of water.
- (h.) Milk-blended butter except in packages conspicuously marked with such name as may be approved by the Board of Agriculture for the purpose.
- (i.) Butter margarine milk-blended butter which contains a preservative prohibited by any regulation made under this Act or an amount of a preservative in excess of the limit allowed by such regulation. (t)

Snuff work.

Tobacco stalks, whether manufactured or not.

Tobacco stalk flour. (u)

Clocks and watches, or any other article of metal impressed with any mark or stamp representing or in imitation of any legal British assay, mark, or stamp, or purporting by any mark or appearance to be of the manufacture of the United Kingdom.

Infected cattle, sheep, or other animals, or the carcases thereof, and hides, skins, horns, hoofs, or any other part of cattle, or other animals which the Privy Council may, by order prohibit in order to prevent the dissemination of any contagious distemper.

Spirits (not being cordials, or perfumed or medicinal spirits), unless in ships of forty tons burden at least, and in casks or other vessels capable of containing liquids, each of such casks or other vessels being of the size or content of nine (x) gallons at the least, and duly reported, or unless in glass or stone bottles, properly packed in cases, and forming part of the cargo of the importing ship and duly reported. (y)

Tobacco, cigars, cigarillos or cigarettes, and snuff, unless in ports approved by the Commissioners of Customs for the importation and warehousing thereof, nor unless in ships of not less than one hundred and twenty tons burden, nor unless in whole and complete packages each of the gross weight of not less than eighty pounds, or eighty pounds net weight of

(s) 62 & 63 Vict. c. 51, s. 1.

(t) 7 Ed. VII. c. 21, s. 5.

(u) 59 & 60 Vict. c. 28, s. 6.

(x) 59 & 60 Vict. c. 28, s. 4.

(y) As to sugar, see 3 Ed. VII. c. 21, s. 1.

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eigarillos or eigarettes including the papers forming the covering of each eigarillo or eigarette. (z)

Tobacco, sweetened (whether manufactured or unmanufactured), except as otherwise specially provided for by this or any other Act relating to the Customs. (a)

Tobacco cut and compressed by mechanical or other means. (b)

White or yellow phosphorus matches. (c)

Wine, except into such ports as may be approved for the importation thereof by the Commissioners of Customs. (d)

43. The importation of arms, ammunition, gunpowder, or any other goods may be prohibited by proclamation or Order in Council. Arms, etc. may be prohibited.

44. The Commissioners of Customs shall cause to be made, and to be publicly exposed at the Customs Houses in the several ports in the United Kingdom, lists of all books wherein the copyright shall be subsisting, and as to which the proprietor of such copyright, or his agent, shall have given notice in writing to the said Commissioners that such copyright exists, stating in such notice when such copyright expires, accompanied by a declaration made and subscribed before a collector of Customs or a justice of the peace, that the contents of such notice are true. Lists of prohibited books to be exposed at Custom Houses.

45. [Persons complaining of prohibition of books in copyright lists may appeal to a judge in chambers.]

47. The proper officers of the Customs may board any ship arriving (e) at any port in the United Kingdom or the Channel Islands, and stay on board until all the goods laden therein shall be duly delivered therefrom, or until her departure, and shall have free access to every part thereof, with power to fasten down hatchways or entrances to the hold, and to mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods (f) on board such ship; and if any place or any box or chest be locked, and the keys be withheld, any examining or superior officer may open any such place box or chest in the best manner in his power; and if any goods be found concealed on board any such ship they shall be forfeited; (g) . . . Power of officers to board ships, seal or secure goods and open locks, &c.

48. (h) No goods, except diamonds and bullion, and lobsters and fresh fish of British taking, imported in British ships, which goods may be landed without report or entry, shall be unshipped from any ship arriving from parts beyond the seas, or be landed or put on shore on Sundays or holidays, except by special permission of the Commissioners of Customs; nor shall they be unshipped, landed, or put on shore on any other days except between the hours of eight o'clock in the morning and four o'clock in the afternoon from the first day of March to the thirty-first day of October, both inclusive, and between the hours of nine o'clock in the morning and four o'clock in the afternoon during the remainder of the year, or between such other hours as may be appointed by the Commissioners of Customs; nor shall any goods whatever be unshipped or landed at any time unless in the presence or with the authority of the proper Time and place for landing goods inwards.

(z) 59 & 60 Vict. c. 28, s. 5; 6 Ed. VII. c. 20, s. 6.

(a) See 26 & 27 Vict. c. 7, ss. 6, 9, 10.

(b) 52 & 53 Vict. c. 42, s. 1.

(c) 2 Ed. VII. c. 42, ss. 3, 5.

(d) See 53 & 54 Vict. c. 8, s. 8; and 55 & 56 Vict. c. 16, s. 2.

(e) Vessels arriving to come quickly to place of unloading and bring to at the stations for boarding officers; penalty for neglect £20: 46 & 47 Vict. c. 55, s. 5.

Proper accommodation of officers to be provided under the like penalty: s. 6.

(f) Penalty for breaking seals or secretly conveying away £20: s. 7.

(g) See *Att.-Gen. v. Vondiere*, 1 C. M. & K. 571; *Lowe v. Att. Gen.*, 2 C. M. & R. 544.

(h) This section as printed is substituted for the original section by 44 & 45 Vict. c. 12, s. 13.

Sect. 48. officer of Customs, nor shall they be so landed except at some legal quay, wharf, or other place duly appointed for the landing or unshipping of goods, nor shall any goods after having been unshipped or put into any boat or craft to be landed, be transhipped or removed into any other boat or craft previously to their being landed, without the permission of the proper officer of Customs; and if any goods shall be unshipped or removed from any importing ship for the purpose of being landed they shall be forthwith taken to and landed at the wharf, quay, or other place at which the same are intended to be landed. If any goods shall be unshipped landed transhipped removed or dealt with contrary to the provisions of this section they shall be forfeited, together with the barge, lighter, boat, or other vessel employed in removing the same. (i)

Account of
bullion or coin
to be delivered
to the officers
of customs.

49. If the importer, owner, or consignee of any bullion or coin, (k) not being small parcels forming part of the baggage of passengers, imported into Great Britain or Ireland, shall not, within seventy-two hours (l) after the landing thereof, deliver to the collector or other proper officer of Customs a full and true account thereof, including its weight and value, he shall forfeit a sum of twenty pounds.

As to Report of Cargo

*Report of
cargo.*

Master to re-
port within 24
hours after
arrival.

50. The master of every ship, whether laden or in ballast, shall, within twenty-four hours after arrival from parts beyond the seas at any port in the United Kingdom, make due report of such ship to the collector or other proper officer in the form No. 1 in Schedule B. to this Act, (m) and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct; and such report, except where otherwise specially allowed or provided for by their order or at ports where goods may be landed into transit sheds, shall be made before bulk be broken. (n)

Penalty on
failure of
master to
report.

51. . . . All goods not duly reported may be detained by any officer of Customs until so reported or the omission explained to the satisfaction of the Commissioners of Customs, and may in the meantime be removed to the Queen's warehouse. (o)

Penalty on
failure of
person in
charge of
commissioned
ships, British
or foreign,
having goods
on board, to
deliver an ac-
count.

52. The captain or other officer having the charge of any ship (having commission from Her Majesty or from any foreign state), having on board any goods laden in parts beyond the seas, shall, on arrival at any port in the United Kingdom, and before any part of such goods be taken out of such ship, or when called upon so to do by any officer of the Customs, deliver an account in writing under his hand to the best of his knowledge of the quality and quantity of every package or parcel of such goods, and of the marks and numbers thereon, and of the names of the respective shippers and consignees of the same, and shall make and subscribe a declaration at the foot of such account declaring to the truth thereof, and shall also truly answer to the collector or other proper officer such questions concerning such goods as shall be required of him, . . . and all such ships shall be liable to such searches as merchant ships are liable to, and the officers of the Customs may freely enter and go on board all such ships, and bring from thence on shore into the Queen's warehouse any goods found on board

(i) See *R. v. Candy*, Ex. 15, 5, 1843, M.S. rep.; *Att.-Gen. v. Hurel*, 11 M. & W. 589.

(k) Or diamonds.

(l) 61 & 62 Vict. c. 46, s. 3.

(m) *I.e.* as to the ship crew cargo and stores.

(n) See 61 & 62 Vict. c. 46, s. 2.

(o) As to gold and silver plate, see 46 & 47 Vict. c. 55, s. 10; 53 & 54 Vict. c. 8, s. 36; 4 Ed. VII. c. 6, and *Goldsmith's Co. v. Wyatt*, 1905, 2 K. B. 586. As to postal packets, 8 Ed. VII. c. 48, s. 29.

any such ship as aforesaid; subject nevertheless to such regulations in respect to ships of war belonging to Her Majesty as shall from time to time be directed in that respect by the Commissioners of Her Majesty's Treasury. Sect. 52.

53. The master of every ship arriving from parts beyond the seas shall at the time of making report answer all such questions relating to the ship cargo crew and voyage as shall be put to him by the collector or other proper officer; and if he refuses to answer or does not answer truly, or if after the arrival within four leagues of the coast of the United Kingdom bulk shall be broken, or any alteration made in the stowage of the cargo of such ship so as to facilitate the unloading of any part of such cargo before report of such ship and cargo, or if any part be staved destroyed or thrown overboard, or any package be opened, unless cause be shown to the satisfaction of the Commissioners of Customs, in every such case the master shall forfeit the sum of one hundred pounds. (p) Penalty on failure of master to answer questions.

54. If the contents of any package intended for exportation in the same ship shall be reported by the master as being unknown to him, the officers of the Customs may open and examine such package on board such ship, or bring the same to the Queen's warehouse for that purpose; and if there be found therein any goods which are prohibited to be imported such goods shall be forfeited, unless the Commissioners of Customs shall permit them to be exported. Power to open packages reported "Contents unknown."

As to the Entry of Dutiable Goods for Home Use

Entry for home use.

55. The importer of any goods liable to duties of Customs and intended to be delivered for home use on the landing thereof from the importing ship, or his agent, shall before unshipment thereof make perfect entry of such goods by delivering to the collector or other proper officer an entry thereof in the form No. 2 in Schedule B. to this Act, (q) and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct. Particulars of entry of goods for home use.

56. The importer of any goods or his agent shall immediately upon the entry thereof by him for home use pay down any duties which may be payable thereon to the collector or other proper officer appointed to receive the same; and the entry, when signed by such collector or officer, shall be the warrant for the landing and delivery of such goods, and shall be transmitted to the proper officer of Customs for that purpose. Payment of duties.

As to the Entry of Goods intended to be Warehoused without Payment of Duty on First Entry thereof

Entry for warehousing.

57. The importer of any goods intended to be warehoused without payment of duty on the first entry thereof, or his agent, shall deliver to the collector or other officer authorised to receive the same a bill of entry in the form No. 3 in Schedule B. to this Act, (q) and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct; and such bill of entry, when signed by such collector or officer, shall be transmitted to the proper officer of Customs, and be the warrant for the due warehousing of such goods; and upon the entry of any warehoused goods for home consumption form No. 2 may be used, with the addition of the date of warehousing. Particulars of entry of goods intended to be warehoused.

(p) The master of any ship landing or embarking passengers at any port in the United Kingdom shall furnish to such person and in such manner as the Secretary of State shall direct returns as to pas-

sengers who are aliens: 5 Ed. VII. c. 13, s. 5; see *Musgrove v. Toy*, 1891: A. C. 272.

(q) *I.e.* as to marks numbers and packages quantity description and value.

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*Entry by Bill
of sight, etc.*

*As to the Entry of Goods Landed for Examination by Bill of Sight and
Perfecting Entry thereof*

Entry by bill
of sight when
goods not
known.

58. The importer of any goods, or his agent, if unable for want of full information to make a perfect entry of such goods, on making and subscribing a declaration to that effect before the collector or other proper officer, may make an entry by bill of sight for the packages or parcels of such goods in the form No. 4 in Schedule B. to this Act, (r) and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct.

Perfecting
entry by en-
dorsement of
bill of sight.

59. Such entry being delivered to the collector or other proper officer, and signed by him, shall be the warrant for provisionally landing such goods to be examined by such importer in presence of the proper officers; and the importer shall, within three days or such further time as the Commissioners of Customs shall see fit after the landing thereof and before the same shall be delivered, make full and perfect entry thereof by endorsing upon such bill of sight such particulars of such goods as are herein required on making perfect entry of goods, whether for payment of duty, or for warehousing, or for delivery free of duty, as the case may be, and to such endorsement he shall affix the date thereof, together with his signature and place of abode; and such endorsement, when countersigned by the collector or other proper officer, shall be taken as the perfect entry for such goods.

Goods entered
by bill of sight
not to be de-
livered unless
duty is paid or
deposited.

60. Where an entry for the landing and examination of goods for delivery on payment of duty shall be made by bill of sight, such goods shall not be delivered until perfect entry thereof shall have been made and the duties due thereon paid, unless the importer or his agent shall have deposited with the proper officer of the Customs a sum of money sufficient in amount to cover the duties payable thereon; and if the sum deposited on a bill of sight shall not be equal in amount to the duties payable upon all the goods contained in any single package landed or examined thereby, no part shall be delivered until a perfect entry is made and the duties paid or deposited for the whole of the goods contained in such package.

Procedure in
case of default
of perfect entry
of goods.

61. If full and perfect entry of any goods landed by bill of sight as aforesaid be not made within three days after the landing thereof, or within such further time as the Commissioners of Customs may see fit, such goods shall be taken to the Queen's warehouse by the officers of the Customs; (s) and if the importer shall not within one month after such landing make perfect entry of such goods, and pay the duties thereon or on such parts thereof as can be entered for home use, together with the charges of removal and of warehouse rent, such goods shall be sold for the payment of such duties and charges (or for exportation if they be such as cannot be entered for home use or shall not be worth the duties), and the overplus, if any, after payment of such duties and charges, or the charges if sold for exportation, shall be paid to the importer or proprietor thereof: Provided always, that if any entry at any time made as and for a full and perfect entry for goods provisionally landed by bill of sight or deposited in the Queen's warehouse as aforesaid shall not be made in manner herein required for the due landing of the goods, the same shall be deemed to be goods landed without entry.

(r) *I.e.* as to marks numbers and packages quantity description and value.

(s) Extended to goods not cleared or

removed on revocation of approval of a warehouse: 45 & 46 Vict. c. 72, s. 2.

62. If after any goods shall have been duly entered and landed to be warehoused, though not actually deposited in the warehouse, the importer shall further only enter the same or any part thereof for home use or exportation, the same may be delivered and taken for home use or exportation, as the case may be.

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Delivery on further entry of goods entered for warehouse but not deposited.

As to the Entry of British Goods brought back

63. (t) All British goods brought back into the United Kingdom, being of such a kind or description as, if foreign, would be liable to any duty of Customs on importation, shall be deemed to be foreign, and liable to the same duties rules regulations and restrictions as foreign goods of the like kind or description, unless the same shall be brought back within five years from the time of the exportation thereof, and it shall be proved to the satisfaction of the Commissioners of Customs that they are British goods returned, in which case the same may be entered by bill of store, containing such particulars and in such manner and form as the said Commissioners may direct and be delivered free of duty: Provided always, that all goods brought into the United Kingdom for which any drawback might have been received on exportation shall be deemed and treated as foreign unless admitted to entry by special permission of the Commissioners of Customs, and on repayment of such drawback; and all foreign goods on reimportation into the United Kingdom, whether they shall have paid duty on their first importation or not, shall be liable to the same duties rules regulations and restrictions as if then imported for the first time: Provided also, that if any British goods brought into the United Kingdom bear the name brand or mark of any British manufacturer, the same shall, either by bill of store or by and with the consent in writing of the proprietor of such name brand or mark, or his legal representative, or on proof to the satisfaction of the Commissioners of Customs by declaration of the importer that such goods are of British manufacture, be admitted to entry as British.

Entry of British goods returned.

Entry of British goods returned.

As to the Entry of Goods free of Duty

Entry of free goods.

64. The importer of any goods not subject to duties of Customs, or his agent, shall deliver to the collector or other proper officer an entry of such goods in the form No. 5 in Schedule B. to this Act, (u) and containing the several particulars indicated in or required thereby, or in such form and manner as the Commissioners of Customs may direct; and such entry, when signed by the collector or other proper officer, shall be transmitted to the examining officer, and be his warrant for the delivery of the goods mentioned therein, and if such entry shall be incorrect in any particular, the importer or his agent shall within fourteen days after the landing of the goods deliver to the proper officer of Customs a full and accurate account thereof.

Particulars of entry of free goods.

As to Entries of Goods in any of the foregoing Cases

Entries generally.

65. Upon the entry of any goods, the importer, his agent, or the consignee of the ship, as the case may be, shall deliver two or more duplicates of the entry thereof, as the case may require, in which duplicates all sums and numbers may be expressed in figures; and the number of duplicates shall be such as the

Bill of entry to be in duplicate.

(t) This section as printed is substituted for the original section by 42 & 43 Vict. c. 21, s. 14.

(u) I.e. as to marks packages quantity description value, etc.

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collector or other proper officer may require; and the importer or his agent shall produce to such officer, if required by him, the invoice, bills of lading, and other documents relating to the goods.

Forfeiture of goods concealed in packages or delivered without entry.

66. If any goods or other things shall be found concealed in any way or packed in any package or parcel to deceive the officers, such package or parcel, and all the contents thereof, shall be forfeited; and if any goods be taken or delivered out of any ship or out of any warehouse, not having been duly entered, the same shall be forfeited: Provided always, that no entry shall be required in respect of the baggage of passengers, which may be examined, landed, and delivered under such regulations as the Commissioners of Customs may direct, but if any prohibited or uncustomed goods shall be found concealed therein, either before or after landing, the same shall be forfeited, together with everything packed therewith.

Penalty on fraudulent import entries and concealments.

67. If any person shall import, or cause to be imported, goods of one denomination concealed (x) in packages of goods of any other denomination, or any package containing goods not corresponding with the entry thereof, or shall directly or indirectly import or cause to be imported or entered any package of goods as of one denomination which shall afterwards be discovered, either before or after delivery thereof, to contain other goods or goods subject to a higher rate or other amount of duty than those of the denomination by which such package or the goods in such package were entered, such package, and the goods therein, shall be forfeited; . . .

Entry for private use of surplus stores not excessive.

68. The proper officer may permit surplus stores, not being merchandise, nor by him deemed excessive, to be entered for private use under and subject to the same duties rules and regulations as the like sort of goods would be subject to on importation as merchandise, or permit any surplus stores to be entered and warehoused for future use as ship's stores, although the same could not be legally imported by way of merchandise.

Agent to produce authority if required.

69. Whenever any person shall make application to an officer of the Customs to transact any business on behalf of any other person, such officer may require of the person so applying to produce a written authority from the person on whose behalf such application shall be made, and in default of the production of such authority refuse to transact such business.

Officers may take samples.

70. The officers of Customs may on the entry of any goods, or at any time afterwards, take samples of such goods for examination, or for ascertaining the duties payable on such goods, or for such other purpose as the Commissioners of Customs may deem necessary, and such samples shall be disposed of and accounted for in such manner as the Commissioners of Customs may direct. (y)

No entry, etc., valid unless in accordance with Acts.

71. No entry or warrant for the landing of any goods shall be deemed valid unless made in accordance with the provisions of the Customs Acts.

Penalty on importer or agent failing to comply with regulations.

72. Every importer, agent, or other person entering any goods who shall fail to comply with the foregoing regulations, so far as they are respectively applicable to the goods entered by him, shall forfeit a sum not exceeding twenty pounds, and such goods shall be liable to forfeiture.

(x) The onus of proof is on the defendant, *Att.-Gen. v. Hawkes*, 1 C. & J. 121.

(y) As to tea imported, if they find it mixed with other substances or exhausted they are not to deliver it unless with the sanction of the Commissioners and if it be unfit for food it may be destroyed: 38 & 39 Vict. c. 63, s. 30. They may take samples of margarine imported into or manufactured in the kingdom if they have

reason to believe that the provisions of the Margarine Act are infringed by conveyance under another title: 50 & 51 Vict. c. 29, s. 8; see also 62 & 63 Vict. c. 51, ss. 1 and 5, as to margarine-cheese, adulterated butter, condensed milk and other articles proclaimed. In such cases the sample is to be divided into three parts and one part sent to the importer.

As to the Time within which Goods shall be Entered and Landed after the Arrival of the Importing Ship.

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Entry, time for.

73. If the importer of any goods shall not, within fourteen days (exclusive of Sundays and holidays) after the arrival of the ship importing the same, make perfect entry or entry by bill of sight of such goods, or if, having made such entry, he shall not land such goods within such fourteen days or within such further period as the Commissioners of Customs shall direct, the officers of the Customs may convey such goods to the Queen's warehouse; and whenever the cargo of any ship shall have been discharged within such fourteen days with the exception only of a small quantity of goods, the officers of the Customs may forthwith deposit such remaining goods in the Queen's warehouse; and also at any time after the arrival of such ship may deposit any small packages or parcels of goods therefrom in the Queen's warehouse, there to remain for due entry during the remainder of such fourteen days, except as herein-after mentioned; and if any goods so deposited in the Queen's warehouse being of a perishable nature shall not be cleared forthwith, or not being of a perishable nature shall not be cleared within three months after such deposit, or within such further period as the Commissioners may direct, and all charges of removal, freight, and warehouse rent be not paid, such goods may be sold, and the produce thereof paid in discharge of duties, freight, and charges, and the overplus, if any, to the proprietor of the goods on his application for the same; and in case such goods cannot be sold for a sufficient sum to pay the duties and charges, if ordered for sale for home consumption, or the charges if for exportation, the same may, by direction of the Commissioners of Customs, be destroyed; and any officer of Customs having the custody of any goods which shall have come to his hands under the Customs Acts, may refuse delivery thereof from the Queen's warehouse or other place of deposit until proof be given to his satisfaction that the freight due upon such goods has been paid: Provided, that if the importing ship and goods be liable to the performance of quarantine the time for entry and landing of such goods shall be computed from the time at which such ship and goods shall have been released from quarantine.

74. No goods of a combustible or inflammable nature shall be brought into or deposited in the Queen's warehouse unless with the sanction of the Commissioners of Customs; and if any such goods shall be landed by the officers of Customs under the provisions of the Customs Acts, the same may be deposited in any other available place that such officers may deem fit, and whilst so deposited the same shall be deemed to be in the Queen's warehouse, and be liable to be dealt with, at the expiration of fourteen days, in the same manner as goods of a perishable nature actually deposited in the Queen's warehouse, unless duly cleared or warehoused in some approved warehouse in the meantime; and such goods shall be chargeable with such expenses for securing, watching, and guarding the same until sold, cleared, or warehoused as aforesaid, as the Commissioners shall see fit, and neither the said Commissioners nor their officers shall be liable to make good any damage which such goods may sustain by reason or during the time of their being so deposited and dealt with as aforesaid.

75. Wherever any goods shall remain on board any importing ship beyond the period of fourteen days after the arrival of such ship, or beyond such further period as the Commissioners of Customs may allow, such ship shall be detained by the proper officer of Customs until all expenses of watching or guarding such goods beyond such fourteen days, or such further time, if any, allowed as aforesaid, not exceeding five shillings per diem, and of removing the goods, or any of

Conveyance to and deposit in Queen's warehouse of goods in certain cases.

Combustibles not to be deposited in Queen's warehouse.

If goods remain on board importing ship beyond fourteen days, such ship may be detained for expenses.

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them, to the Queen's warehouse, in case the officers shall so remove them, be paid, and the like charge per diem shall be made in respect of any derelict or other ship coming, driven, or brought into the United Kingdom under legal process, by stress of weather, or for safety, when it is necessary to station any officer of the Customs in charge, either on board thereof or otherwise, for the protection of the revenue, so long as the officer shall so remain.

*Unshipping,
landing, and
examination.*

*As to the Unshipping, Landing, Examination, Warehousing, and Custody
of Goods*

Unshipping,
weighing, etc.,
and depositing
of goods, to be
at expense of
importer.

76. The unshipping, carrying, and landing of all goods, and bringing them to the proper place for examination and weighing, putting them into the scales opening unpacking repacking bulking sorting lotting marking and numbering, where such operations respectively are necessary or permitted, and removing to and placing them in the proper place of deposit until duly delivered, shall be performed by or at the expense of the importer.

Proper officer
of customs to
take account of
goods for ware-
house.

77. Upon the entry and landing of any goods to be warehoused, (z) or within such period as the Commissioners of Customs shall direct with respect to the same or any of them, the proper officer of Customs shall take a particular account of such goods at the quay or wharf at which they shall be so landed, or in the warehouse of the port of arrival, if they be goods of which the account is permitted to be taken in the warehouse, or in the warehouse of any other port to which they may be consigned and allowed to be removed by the authority of the Lords Commissioners of the Treasury or the Commissioners of Customs, and shall cause to be marked on each package of which such account shall be taken the contents thereof, and shall enter in a book prepared for that purpose, containing the name of the import ship and of the person in whose name they are entered, the marks numbers and contents of each such package, the description of the goods, and the warehouse or place in the warehouse in which the same shall be deposited, and when the same shall have been so deposited with the authority of such officer he shall certify that the entry and warehousing of such goods is complete, and such goods shall from that time be considered goods duly warehoused; and if any such goods shall be delivered, withheld, or removed from the proper place of examination before the same shall have been examined and certified by such officer, such goods shall be deemed to be goods not duly entered or warehoused, and shall be forfeited.

Goods to be
entered and
duties paid
according to
landing ac-
count.

78. The account of the goods so taken as aforesaid shall be the account upon which the duties payable upon such goods shall be ascertained when the same shall ultimately come to be delivered upon due entry for that purpose, and the same shall be entered and the full duties due thereon be paid according to the quantity taken in such account, without any abatement for any deficiency, except as herein-after provided.

Warehoused
goods to be
deposited in
original pack-
ages or those
of which ac-
count is taken.

79. All goods warehoused shall be deposited in the packages in which the same shall have been imported, except such goods as are permitted to be skipped on the quay, or bulked sorted lotted packed or repacked in the warehouse after the landing thereof, in which case they shall be deposited in the packages in which the same shall be when the account thereof is taken by the proper officer; and if such goods are not so deposited, or if any alteration shall afterwards be made in the goods or packages so deposited, or in the packing thereof in the warehouse, or in the marks and numbers of such packages, or if the same

(z) Goods liable to a duty of customs or excise warehouse: 44 & 45 Vict. c. 12, s. 18; 61 & 62 Vict. c. 46, s. 5.

shall be removed from the room in the warehouse in which the same are deposited, without the presence and sanction of the proper officers, except for delivery under the proper warrant, order, or authority for that purpose, such goods and packages shall be forfeited.

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80. The Commissioners of Customs may direct what goods may be skipped on the quay or be bulked sorted lotted packed or repacked, and determine in respect of what goods the account may be taken in any warehouse approved by them for that purpose, and within what time after the landing thereof, and on such conditions as they may deem necessary.

Commissioners to direct what goods may be bulked, sorted, packed, etc.

81. If the occupier of any warehouse shall neglect to stow the goods warehoused therein so that easy access may be had to every package and parcel thereof, he shall for every such neglect forfeit the sum of five pounds.

Penalty on warehouse occupier neglecting to stow goods properly.

82. If the occupier of any warehouse shall not produce to any officer of Customs on his request any goods deposited in such warehouse which shall not have been duly cleared and delivered therefrom, such occupier shall for every such neglect forfeit the sum of five pounds in respect of every package or parcel not so produced, besides the duties due thereon.

Penalty on warehouse occupier neglecting to produce goods deposited.

83. If any goods entered to be warehoused shall not be duly warehoused in pursuance of such entry, or being duly warehoused shall be in any way concealed in or removed from the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal mixing, removal, or concealment, they shall be forfeited.

Forfeiture of goods not duly warehoused, or fraudulently concealed or removed.

84. If any person shall clandestinely open any warehouse, or, except in the presence of the proper officer of Customs acting in the execution of his duty, gain access to the goods therein, he shall for every such offence forfeit the sum of one hundred pounds.

Penalty on clandestinely opening warehouse, etc.

85. If any goods shall be taken out of any warehouse without due entry, the occupier of such warehouse shall forthwith pay the duties due upon such goods; and every person taking out any goods from any warehouse without payment of duty, or who shall aid, assist, or be concerned therein, and every person who shall destroy or embezzle any goods duly warehoused, shall be deemed guilty of a misdemeanor, and shall, upon conviction, suffer the punishment by law inflicted in cases of misdemeanor; but if such person shall be an officer of Customs or Excise not acting in the due execution of his duty and shall be prosecuted to conviction by the importer consignee or proprietor of such goods, no duty shall be payable for or in respect of such goods, and the damage occasioned by such destruction or embezzlement shall, with the sanction of the Commissioners of the Treasury, be repaid or made good to such importer consignee or proprietor by the Commissioners of Customs.

Liability for goods taken out of warehouse without entry, etc.

86. No compensation shall be made by the Commissioners of Customs to any importer proprietor or consignee of any goods by reason of any damage occasioned thereto in the warehouse by fire or other inevitable accident.

No compensation by Commissioners for goods damaged by fire.

87. If any goods warehoused or entered to be warehoused, or entered to be delivered from the warehouse, shall be lost or destroyed by unavoidable accident, either on ship board or in removing landing or receiving into the warehouse, or in the warehouse, the Commissioners of Customs may remit or return the duties due or paid thereon.

Commissioners may remit duties on warehoused goods lost or destroyed.

As to the Removal of Warehoused Goods

Removal.

88. Any goods warehoused at any port in the United Kingdom may be removed by sea or by inland carriage to any other port in which the like kind of goods may be warehoused to be re-warehoused at such other port, and again

Removal of goods from one warehousing port to

Sect. 88. as often as may be required at any other such port to be there re-warehoused, or, with the permission of the proper officers of Customs, from any warehouse in any port to any other warehouse in the same port, under such regulations and with such security as the Commissioners of Customs may direct, on the delivery to the proper officer by the person requiring such removal of a request note, stating the particulars of the goods required to be removed, the name of the port, or of the warehouse if in the same port, to which the same are intended to be removed, and with such other information and in such manner and form as the Commissioners of Customs or the proper officer may direct or require.

Officers at port of removal to transmit account of goods to officers at port of destination. 89. On the delivery of any goods for removal, an account, containing the particulars thereof, shall be transmitted by the proper officer of the port of removal to the proper officer of the port or place of destination, and the person requiring the removal thereof shall enter into bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port or place of destination within such time as the Commissioners of Customs may direct, such bond to be taken by the collector or other proper officer, either of the port or place of removal or the port or place of destination, as shall best suit the residence or convenience of the parties interested in such removal; and if such bond shall have been given at the intended port or place of destination, a certificate thereof, under the hand of the collector or other proper officer of such port, shall, at the time of the entering of such goods, be produced to the collector or other proper officer of the port of removal; and such bond shall not be discharged unless such goods shall have been produced to the proper officer and duly re-warehoused at the port of destination, or unless the full duties of Customs shall have been paid thereon within forty-eight hours after the arrival thereof, but in no case later than the time allowed for such removal, or shall have been otherwise accounted for to the satisfaction of the Commissioners of Customs, nor until the full duties due upon any deficiency of such goods not so accounted for shall have been paid; but any remover may enter into general bond, with such sureties, in such amount, and under such conditions as the Commissioners of Customs may approve, for the removal from time to time of any goods from one warehouse to another, and for the due arrival and re-warehousing of the same at the place of destination, within such time or times as the said Commissioners may direct.

Goods, on arrival at port of destination, to be subject to regulations 90. Upon the arrival of such goods at the port or place of destination, the same shall be entered and warehoused in the same manner, and under and subject to the same laws rules and regulations, so far as the same are or can be made applicable, as are required on the entry and warehousing of goods on the first importation thereof.

On arrival of goods at port of destination they may, after formal re-warehousing, be entered for exportation or for home use on payment of duties. 91. If upon the arrival of goods so removed as aforesaid at the port of destination the parties shall be desirous forthwith to export the same, or to pay duty thereon for home use, without actually lodging the same in the warehouse for which they have been entered and examined to be re-warehoused, the officers of Customs at such port may permit the same to be entered and delivered for home use upon payment of the duties due thereon, or, after all the formalities of entering and examining such goods for re-warehousing have been duly performed, to be entered and shipped for exportation, as if such goods had been actually lodged in such warehouse; and all goods so exported, or for which the duties have been so paid, shall be deemed to have been duly cleared from the warehouse.

Destruction of tobacco 94. Tobacco abandoned by the importer or proprietor as not worth the duty shall be destroyed within such time and in such manner as the

Commissioners of Customs may direct, at the cost and charges of such importer or proprietor.

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95. With the sanction of the Commissioners of Customs, and after such notice given by the respective importers or proprietors, and at such times and under such regulations and restrictions as the Commissioners of Customs shall from time to time require and direct, it shall be lawful in the warehouse to sort, separate, pack, and repack any goods, and to make such alterations therein as may be necessary for the preservation sale shipment or disposal thereof, provided that such goods be repacked in the packages in which they were imported, or in such other packages as the Commissioners shall permit (not being less in any case, if the goods be to be exported or to be removed to another warehouse, than is required by law on the importation of such goods); (a) and also to draw off British spirits into bottles for home consumption, or wine or spirits into reputed quart or pint bottles, or bottles or flasks of such smaller size as the Commissioners of Customs may see fit, for exportation only; and to draw off and mix with any wine spirits, not being British flavoured or compounded spirits, and not exceeding the proportion of ten gallons of spirits to one hundred gallons of wine, provided that if the wine so mixed be thereby raised to a greater degree of strength than forty per cent. of such proof spirit, such wine shall not be admitted for home consumption; but wine in bond may be fortified to a greater degree of strength for exportation only, if it appear to the said Commissioners to be necessary for its preservation; and also to fill up any casks of wine or spirits from any other casks of the same respectively secured in the same warehouse; and also to rack off any wine from the lees, and mix any wines of the same sort, erasing from the cask all import brands, unless the whole of the wine so mixed be of the same brand; and also to take such samples of goods as may be allowed by the Commissioners of Customs, with or without entry, and with or without payment of duty, except as the same may eventually become payable as on a deficiency of the original quantity; and after such goods have been so separated and repacked in proper or approved packages, the Commissioners of Customs may, at the request of the importer or proprietor of such goods, cause or permit any refuse, damage, or surplus goods occasioned by such separation or repacking, or, at the like request, any goods which may not be worth the duty, to be destroyed, and may remit the duty payable thereon.

abandoned as not worth duty.
Sorting, re-packing, etc., goods in warehouse; fortifying and racking wine, etc.

96. The Commissioners of Customs may permit any goods to be taken out of the warehouse without payment of duty for such purpose and for such period as to them may appear expedient, and in such quantities, and under such regulations and restrictions, and with such security by bond for the due return thereof or the payment of the duties due thereon, as they may direct or require.

Goods in warehouses may be taken out under certain regulations and with security for duties.

As to the Entry of Warehoused Goods for Home Consumption and Exportation, and the Delivery thereof

Entry for home consumption and exportation.

97. No warehoused goods shall be taken or delivered from the warehouse, except upon due entry and under the care of the proper officers, for exportation, or upon due entry and payment of the full duties payable thereon for home use, except goods duly delivered to be shipped as stores, in such quantities as the collector or other proper officer shall allow, and subject to such directions and regulations as the Commissioners of Customs may see fit.

Entry for exportation or home use.

(a) Not to apply to tobacco: 60 & 61 Vict. c. 24, s. 3.

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Persons entering warehoused goods for home use to deliver bill of entry and pay down duties.

98. Upon the entry of any goods to be cleared from the warehouse for home use, (b) the person entering such goods shall deliver a bill of entry, and duplicates thereof, in like manner and form, containing the same particulars as are herein-before required on the entry of goods to be delivered for home use on the landing thereof, as far as the same may be applicable, and shall at the same time pay down to the proper officer of the Customs the full duties payable thereon, not being less in amount than according to the account of the quantity taken by the proper officer on the first entry and landing thereof, except as to the following goods, viz., tobacco, wine, spirits, figs, currants, and raisins, the duties whereon, when cleared from the warehouse for home use, shall be chargeable upon the quantity of such goods, ascertained by weight, measure, or strength at the time of actual delivery thereof, unless there is reasonable ground to suppose that any portion of the deficiency or difference between the weight, measure, or strength ascertained on landing and first examination of any such last-mentioned goods and that ascertained at the time of actual delivery has been caused by illegal or improper means. . . .

No duty for deficiency in goods entered for exportation.

99. No duty shall be charged in respect of any deficiency in goods entered and cleared from the warehouse for exportation unless the officers of Customs have reasonable ground to suppose that such deficiency, or any part thereof, has arisen from illegal abstraction. (c)

Exportation. As to the Exportation, Entry, and Clearance of Ships to Parts beyond the Seas

Warehoused goods not to be exported in ship of less than forty tons burden.

100. No person shall export any warehoused goods, or goods liable to duties of Customs transhipped, or goods entitled to drawback on exportation, nor shall enter any such goods for exportation from the United Kingdom to parts beyond the seas, in any ship of less burden than forty tons.

Master of vessels outwards to deliver certificate of clearance of last voyage, and to make entry outwards.

101. The master of every ship in which any goods are to be exported from the United Kingdom to parts beyond the seas, or his agent, shall, before any goods be taken on board, except as is hereafter provided, deliver to the collector a certificate from the proper officer of the due clearance inwards or coastwise of such ship of her last voyage, and shall also deliver therewith an entry outwards of such ship, verified by his signature in the form No. 6 in Schedule B. to this Act, (d) and containing the several particulars indicated in or required thereby, or in such other form or manner as the Commissioners of Customs may direct; and if such ship shall have commenced her lading at some other port, the master shall deliver to the proper officer the clearance of such goods from such other port; and if any goods be taken on board any ship at any port before she shall have entered outwards at such port (unless a stiffening order, when necessary, shall be issued by the proper officer to lade any heavy goods for exportation on board such ship), the master shall forfeit the sum of one hundred pounds: Provided that, on the arrival at any port in the United Kingdom of any ship about to deliver her cargo at more than one port in the United Kingdom, it shall be lawful, subject to such regulations as the Commissioners of Customs may deem necessary, to allow the entry outwards of such ship, and to permit the shipment

(b) As to sugar and molasses, see 3 Ed. VII. c. 46, s. 3.

(c) As to light dues, see 57 & 58 Vict. c. 60, s. 651, and harbour dues, 10 & 11 Vict. c. 27, s. 48. If unpaid the ship may be detained. The duties become a debt to the Crown on importation:

Leaper v. Smith, Bun. 79; *Anon.* Lam. 15; *Salter v. Magapert*, 1 Roll. R. 380; *Att.-Gen. v. Weeks*, Bun. 223; *Att.-Gen. v. Ansted*, 12 M. & W. 520.

(d) *I.e.* as to nationality, tonnage and destination.

of goods for exportation in such ship to the foreign destination for which such ship shall be entered outwards, before the whole of the goods imported in such ship shall have been discharged therefrom, the complete separation of such goods from the inward cargo being effected to the satisfaction of the collector or other proper officer of the port: Provided also, that on any ship commencing to load goods for exportation to parts beyond the seas, and about to proceed to any other port in the United Kingdom to complete her loading, it shall be lawful, subject to such regulations as the Commissioners of Customs may deem necessary, to permit such ship, notwithstanding any provisions to the contrary, to convey goods(e) from the port at which such ship shall commence loading to any other port or ports in the United Kingdom for delivery there, the complete separation of such goods from the cargo to be exported to be effected to the satisfaction of the collector or other proper officer at the port of shipment.

Sect. 101.

102. No warehoused or drawback goods shall be shipped, put off, or water-borne to be shipped for exportation from any port or place in the United Kingdom on Sundays or public holidays, except by special permission of the Commissioners of Customs, nor from any place not being a legal quay, wharf, or other place duly appointed for such purpose, nor without the presence or authority of the proper officer of Customs, nor before due entry outwards of such ship and due entry of such goods, nor before due clearance thereof for shipment; and any such goods shipped, put off, or water-borne to be shipped contrary hereto shall be forfeited; and it shall be lawful for such officers to open and examine all goods shipped or brought for shipment at any place in the United Kingdom, and the opening for that purpose of packages containing such goods, and the weighing, repacking, landing (when water-borne), and the shipping thereof shall be done by or at the expense of the exporter.(f)

Goods not to be shipped except on proper days and places, nor until entry and clearance.

103. If any British or Irish spirits shall be exported from Great Britain or Ireland to parts beyond the seas, or be removed to the Isle of Man, or be brought to Great Britain or Ireland, or to any wharf, quay, or other place, or water-borne for that purpose, in casks containing less than nine gallons (g) each of such spirits, the same shall be liable to forfeiture.(h)

British and Irish spirits in nine-gallon casks.

As to the Entry and Clearance of Goods for Exportation

104. Before any warehoused goods, British-wrought plate, or goods entitled to any drawback of Customs on exportation, or exportable only under particular rules, regulations, or restrictions, shall be permitted to be exported, the exporter or his agent shall deliver to the collector or other proper officer a bond note or account of such goods, and give such security by bond as the Commissioners of Customs shall require, that such goods shall be duly shipped and exported, and shall be landed at the place for which they are entered outwards, within such time as the Commissioners may deem reasonable, or be otherwise accounted for to their satisfaction; and such bond note, when certified by the proper officer, shall be the export entry for the goods enumerated therein; Provided that any

Bond for due shipping and landing on exportation.

(e) 52 & 53 Vict. c. 42, s. 5.

(f) As to salmon parcels, 28 & 29 Vict. c. 121, s. 65; 31 & 32 Vict. c. 123, s. 22.

(g) Foreign spirits racked or drawn off in a warehouse may, in casks each containing not less than nine gallons, be exported or removed for exportation only to another warehouse in the United Kingdom, and may be imported into the Channel Islands, or any of them, and may

be exported from the said islands to foreign parts only, and may be removed from any one to any other of the said islands without any licence from the officers of customs, and may be carried coastwise from any one part to any other part of the said islands: 46 & 47 Vict. c. 55, s. 3.

(h) As to methylated spirits, see 53 & 54 Vict. c. 8, s. 34.

Sect. 104. person desirous of exporting any such goods may, at his option, but subject to such regulations as the Commissioners of Customs may direct, give a general bond, with such security, in such amount, and under such conditions as the said Commissioners may require, in lieu of separate bond for each exportation, first delivering in each case to the proper officer a notice, in such form as the said Commissioners shall prescribe, containing an account of the particular goods to be exported by him under such general bond in any particular ship. (i)

Exporter to deliver shipping bill.

105. Before any goods upon which any drawback of Customs on exportation shall be claimed shall be shipped or water-borne to be shipped for exportation, the exporter or his agent shall deliver to the proper officer of Customs a shipping bill, with claim and declaration at the foot thereof, in the form No. 7 in Schedule B. to this Act, (k) and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct. (l)

Drawback goods not agreeing with shipping bill forfeited.

106. If any goods upon which any drawback shall be claimed or allowed be shipped or brought to any quay, wharf, or other place to be shipped for exportation, shall, on examination by the proper officers of Customs, be found not to agree with the entry in the shipping bill or other proper document for allowance of drawback on shipment, or shall be found to be of less value for home use than the amount of the drawback claimed, all such goods, and the package containing the same, with all other the contents therein, shall be forfeited; and the person entering such goods, and claiming the drawback thereon, shall in any and every such case forfeit one hundred pounds, or treble the amount of the drawback claimed, at the election of the Commissioners of Customs. (m)

Inland revenue drawback.

107. No drawback of excise shall be allowed upon any goods cleared for exportation, unless the person intending to claim such drawback shall have given due notice to the officer of excise, and shall have produced to the proper officer of Customs, at the time of clearing such goods, a proper document under the hand of the officer of excise, containing the description of such goods; and if such goods be found to correspond with the particulars of the goods contained in such document, and be duly shipped and exported, the proper officer of Customs shall, if required, certify such shipment upon such document, and shall transmit the same to the officer of excise. (n)

No drawback on tobacco not properly manufactured, and penalty for fraudulent attempts to obtain drawbacks. 26 & 27 Vict. c. 7.

108. No drawback shall be allowed on any tobacco not wholly manufactured from tobacco on which duty on importation shall have been paid, nor on any tobacco mixed with dirt, rubbish, or other substance, except as provided by the Manufactured Tobacco Act, 1863; (o) and every person who shall enter or ship, or cause to be entered or shipped, any tobacco contrary hereto, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, or two hundred pounds, at the election of the Commissioners of Customs, and all such tobacco and other substances shall be forfeited.

(i) See 1 Ed. VII. c. 7, sch. 2.

(k) *I.e.* as to quantity, quality and value, and claim for drawback.

(l) And see 47 & 48 Vict. c. 62, s. 3.

(m) 1 Ed. VII. c. 7, sch. 2.

(n) If any goods or commodities upon the exportation of which a drawback of excise is payable shall after the same shall have been shipped on board any vessel for exportation be brought on shore, or if the package or packages in which

any such goods or commodities shall be contained shall after shipment thereof as aforesaid be opened or the marks letters or devices thereon be cancelled obliterated or altered without the sanction of the commissioners . . . all such goods and commodities and the packages containing the same shall be forfeited and may be seized by any officer of customs or excise: 26 & 27 Vict. c. 33, s. 17.

(o) See *post*, p. 210.

109. The provisions of the Customs Acts with reference to the exportation of warehoused goods, so far as they are applicable, shall be deemed to apply to and include goods liable to duties of Customs transhipped, and goods exported on drawback.

Sect. 109.

Provisions as to exportation applicable to transhipment and drawback goods.

Specifications for free goods six days after clearance.

110. (p) The exporter (q) of goods for which no bond is required shall (except as herein-after provided) within six days after the final clearance outwards of the exporting ship, (r) or within such other period as the Commissioners of Customs may direct, either by himself or his agent, deliver to the proper officer of Customs at the port of shipment a specification in the form No. 8 or No. 9 in Schedule B. to the Customs Consolidation Act, 1876, (s) according to the nature of the goods, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct, and shall subscribe the declaration at the foot thereof, and on the demand of the proper officer of Customs shall produce the invoice bills of lading and other documents relating to the goods to test the accuracy of such specification; and on failure to comply with any of the foregoing requirements, the exporter or agent shall for every such offence forfeit five pounds; and in case any of the particulars contained in any such specification shall be incorrect or inaccurate, the person subscribing the declaration shall forfeit the like penalty.

Provided always, that no salmon shall be shipped to be exported without previous entry thereof in accordance with the Salmon Fishery Acts for the time being, nor except upon due compliance in all other respects with the provisions of such Acts. (t)

112. If any exporter of goods who shall have delivered a specification thereof for exportation in any ship shall fail, in case such goods or any of them shall not be duly shipped, to attend the proper officer of Customs, within six days after the final clearance outwards of such ship, either by himself or his agent, and correct such specification, he shall forfeit five pounds.

Attendance of exporter, to correct specification.

113. The shipping bill or bills, when filled up and signed by the exporter or his agent or the consignee of the ship, as the case may be, in such manner

Shipping bill signed by exporter or to be clearance for goods.

(p) This section as printed is substituted for the original section by 44 and 45 Vict. c. 12, s. 13.

(q) Where a ship touching at a port in the United Kingdom for the purpose only of taking in coals or fuel for use and proceeding on a voyage to a foreign port, is not under the regulations of the Commissioners of Customs, required to clear, every person who ships such coals or fuel shall for the purpose of this section be deemed to be the exporter thereof. Provided that the period within which the specification mentioned in the section is required to be delivered shall in the case of such coals or fuel be reckoned from the time of shipment: 52 & 53 Vict. c. 42, s. 3. Extended to stores by 61 & 62 Vict. c. 46, s. 4.

(r) By 61 & 62 Vict. c. 46, s. 4 (2) a ship built in the United Kingdom and not registered as a British ship when she departs on her first voyage shall be treated both as goods and as an exporting ship within this section, and the builder or owner of the ship shall be treated as the ex-

porter so far as the ship is treated as goods.

(s) *I.e.* as to quantity and description.

(t) All unclean or unseasonable salmon and salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, exported or entered for exportation shall be forfeited: 26 & 27 Vict. c. 10, s. 3. Any salmon shipped or exported or brought to any wharf quay or other place for exportation between September 3 and April 30 shall be forfeited. Any officer of the customs may between those dates open any parcel entered or intended for exportation or brought to any quay wharf or other place for that purpose and suspected by him to contain salmon, and may detain any salmon found in such parcel until proof is given in manner provided by law of the salmon being such as may be legally exported and if the salmon before such proof is given become unfit for human food the officer may destroy the same: 28 & 29 Vict. c. 121, s. 65; 33 & 34 Vict. c. 33, s. 3. See also 55 & 56 Vict. c. 50, s. 3, *post*, p. 437.

Sect. 113. as the export officer may require, and countersigned by him, shall be the clearance for all the goods enumerated therein; and if any of such goods shall consist of transshipment goods, the exporter or his agent shall, under a penalty of forty shillings, furnish to the export officer an accurate account thereof, with the marks numbers and description of the packages, and the contents thereof, which, when certified by the export officer, shall accompany the ship; and if the exporter or his agent shall require a similar certificate in respect of any goods shipped for exportation the export officer shall, on its being presented to him for that purpose, certify the same.

Penalty on unauthorised acting as a licensed lighterman. 114. If any goods cleared for drawback or from the warehouse shall be carried or water-borne to be put on board any ship for exportation by any person not at the time duly licensed and authorised to act as a licensed lighterman, either in the port of London or any other port at which lightermen are required to be so licensed, or by any person not being in the employ of such lighterman at the time duly authorised to act as such, every such person shall for every such offence forfeit the sum of twenty pounds.

Forfeiture of warehoused goods removed or shipped for exportation without authority. 115. If any goods taken from the warehouse for removal or for exportation shall be removed or shipped, except with the authority or under the care of the proper officer of Customs, and in such manner, by such persons, within such time, and by such roads or ways as such officer shall permit or direct, such goods shall be forfeited; and if any such goods shall be illegally removed or carried away from any carriage cart boat lighter quay wharf or other place prior to the shipment thereof on board the exporting or removing vessel, or from any ship cart or carriage in or on which the same shall have been shipped or laden, the bond given in respect thereof shall be forfeited, and may forthwith be put in suit for the penalty thereof, although the time prescribed in such bond for the landing or removal and re-warehousing of such goods at the place of destination shall not have expired.

Power to remit duty on warehoused goods lost or destroyed. 116. If any goods duly entered for delivery from the warehouse for removal or exportation shall be lost or destroyed by unavoidable accident, either in the delivery from the warehouse or the shipping thereof, the Commissioners of Customs may remit the duties thereon.

As to Debentures for Drawback on Goods Exported

Debenture for drawback. 117. For the purpose of computing and paying any drawback claimed and payable upon any goods duly entered shipped and exported, a debenture shall in due time after such entry be prepared by the collector or other proper officer; certifying in the first instance the entry outwards of such goods; and as soon as the same shall have been duly exported, and a notice containing the particulars of the goods shall have been delivered by the exporter to the export officer, the shipment and exportation thereof shall be certified upon such debenture by the export officer, and the debenture shall thereupon be computed and passed with all convenient despatch.

Declaration on debenture as to exportation and right to drawback. 118. The person entitled to any drawback on any goods duly exported, or his agent authorised by him for that purpose, shall make and subscribe a declaration upon the debenture that the goods mentioned therein have been actually exported, and have not been re-landed, and are not intended to be re-landed in any part of the United Kingdom, and that such person at the time of entry and shipping was and continued to be entitled to the drawback thereon; and the name of such person shall be stated in the debenture, which shall then be delivered to such person or his agent; and the receipt of such

person on the debenture, countersigned by the holder of such debenture, if the same shall have been transferred in the meantime, shall be the discharge for such drawback when paid. **Sect. 118.**

119. No debenture for any drawback allowed upon the exportation of any goods shall be paid after the expiration of two years from the date of the shipment of such goods. (*u*)

120. (*x*) If any goods which have been cleared to be exported from the warehouse or for any drawback shall be shipped or entered to be shipped on board any vessel of less burden than forty tons, or shall not be duly exported to and landed in parts beyond the seas, or if the same or any other goods which shall have been shipped for exportation shall be unshipped or re-landed in any part of the United Kingdom (such goods not having been duly re-landed or discharged as short-shipped under the care of the proper officers), or shall be carried to any of the Channel Islands (not having been duly entered, cleared, and shipped to be exported or carried directly to such islands), the same shall be forfeited, together with any ship, boat, or craft which may have been used in so unshipping, re-landing, landing, or carrying such goods from the ship in which the same were shipped for exportation; and the master of such ship, and any person by whom or by whose orders or means such goods shall have been so unshipped, re-landed, landed, or carried, or who shall aid, assist, or be concerned therein, shall forfeit, at the election of the Commissioners of Customs, a sum equal to treble the duty-paid value of such goods or the penalty of one hundred pounds.

121. [Wine allowed for officers in the navy.]

122. [Power to transfer wine on leaving service, etc.]

123. [Paymasters of Her Majesty's ships may ship tobacco for crew free of duty.]

124. [Transhipment of remains of tobacco on removal of paymaster.]

125. [Limiting the quantity of tobacco.]

As to the Shipment of Stores

126. The master of every ship of the burden of forty tons or upwards departing from any port in the United Kingdom upon a voyage to parts beyond the seas shall, upon due authority and request made by him, and upon such terms and conditions as the Commissioners of Customs may direct, receive from the export officer an order for the shipment of such stores as may be required and allowed by the collector or other proper officer for the use of such ship, with reference to the number of the crew and passengers on board and the probable duration of the voyage on which she is about to depart; and every such request shall be made in such form and manner as the collector or other proper officer shall require, and shall be signed by the master or owner of the vessel; and the master, or his agent duly authorised by him in writing for that purpose, shall deliver to the export officer the stores content, containing the particulars of such stores, and shall make out and subscribe thereon, in the presence of the proper officer, a declaration that the contents thereof are true, and that all the requirements of the Merchant Shipping Acts (*y*) respecting outward-bound ships have been complied with, and also an account of the stores so shipped, together with any other stores then already on board, and the latter, when signed by the

(*u*) See 58 & 59 Vict. c. 16, s. 7.

c. 21, s. 14.

(*x*) This section as printed is substituted for the original section by 42 & 43 Vict.

(*y*) See *post*, pp. 123, 127.

Name of person entitled to be declared.

Payment within two years.

Warehouse or debenture goods not duly exported.

Victualling bill for stores.

Sect. 126. export officer and countersigned by the collector or other proper officer, shall be the victualling bill; and no stores shall be shipped for the use of any ship, nor shall any articles taken on board any ship be deemed to be stores, except such as shall be borne upon such victualling bill; and if any such stores shall be re-landed at any place in the United Kingdom (without the sanction of the proper officers of Customs), the same shall be forfeited, and the master and owner of the ship shall each be liable to a penalty of treble the value of such stores, or one hundred pounds, at the election of the Commissioners.

As to Clearance Outwards

Delivery to
searcher of
copy of report,
if inward cargo
reported for
exportation.

127. If there be on board any ship any goods being part of the inward cargo reported for exportation in the same ship, the master shall, before clearance outwards of such ship from any port in the United Kingdom, deliver to the searcher a copy of the report inwards of such goods, certified by the collector or other proper officer, and if such copy be found to correspond with the goods so remaining on board, the export officer shall sign the same, to be filed with the certificates or shipping bills, if any, and victualling bill of the ship.

Before clear-
ance, certifi-
cates to be
delivered to
the proper
officer.

128. Before any ship shall be cleared outwards from the United Kingdom, the master or other person authorised in writing by him, shall attend before the collector or other proper officer, and shall answer all such questions as shall be demanded of him by such collector or other proper officer concerning the ship, the cargo, and the voyage, and shall deliver to the collector or other proper officer a content of such ship in the form No. 10 in Schedule B. to this Act, (z) or to the same effect, and containing the several particulars therein required, as far as the same can be known by him, and shall make and subscribe the declaration at the foot thereof in the presence of the collector or other officer, unless such content shall be in any case dispensed with by the Commissioners of Customs under such regulations as they may see fit; and before clearance shall deliver the certificates, if any, to the collector or any other proper officer, who shall file them, together with a copy of the report inwards, if any, of goods reported for exportation in such ship, and the victualling bill, with a label attached and sealed thereto in the form and to the effect following:

(Seal.)

CLEARANCE LABEL.

Number of Certificates (*Numbers in Figures*).

Ship (*Name of Ship*).

Master (*Name of Master*).

Date of Clearance _____

*Signature of Collector or other
proper Officers of Customs* } _____

and such label, when filled up and signed by the proper officers, shall be the clearance and authority for the departure of the ship.

Additional
content for
goods shipped
at other ports

129. When any ship having been cleared at one port proceeds to take in goods at any other port, the master shall, after due shipment of such goods at such other port, deliver to the collector or other proper officer there an additional like content of the goods so shipped, and so on from port to port until final

(z) *I.e.* as to name tonnage crew etc. and as to warehoused transhipment drawback and restricted goods.

clearance outwards of the ship; and in each instance the additional certificates, if any, and other necessary documents, shall be attached to the label used at the first port of departure, and be sealed in like manner. Sect. 129.

130. If any goods for the exportation of which in any ship bond shall have been given shall not be duly shipped before the departure of such ship, such goods shall be forfeited unless due notice of the non-shipment thereof shall be given to the proper officer immediately after such departure, in order that he may certify the short shipment thereof; and if such goods shall not within fourteen days after the final clearance of the ship be re-warehoused or re-entered for exportation under bond in some other ship, the person entering the same shall forfeit the sum of five pounds; and if any goods shall be unshipped without the sanction of the proper officer of Customs in any part of the United Kingdom from any ship entered outwards, such goods shall be forfeited and the master of such ship and every person concerned in such unshipment shall forfeit one hundred pounds, or treble the value of the goods so unshipped or landed. Short shipment of goods to be notified to proper officer.

131. If any goods for which entry before shipment is required shall be shipped, put off, or water-borne to be shipped, without being duly cleared, or otherwise contrary to the provisions of this or any other Act relating to the Customs, the same shall be liable to forfeiture. Forfeiture of goods shipped contrary to provisions.

132. If any ship having on board any goods shipped as cargo or any goods reported inwards for exportation in such ship, or any stores liable to duty or entitled to drawback, shall depart from any port without being duly cleared, the master shall forfeit the sum of one hundred pounds. Penalty on departing without being cleared.

As to Boarding and Departure of Ships after Clearance

134. Any officer of Customs may go on board any ship after clearance outwards within the limits of any port in the United Kingdom, or within one league of the coast thereof, and may demand the ship's clearance, and if the master shall refuse to produce the same and answer such questions concerning the ship, cargo, and intended voyage as may be demanded of him, he shall forfeit the sum of five pounds. (a) Boarding of ships.
Officer may board ship after clearance.

135. If any officer of Customs shall place any lock, mark, or seal upon any stores or goods taken from the warehouse without payment of duty as stores on board any ship or vessel departing from any port in the United Kingdom, and such lock, mark, or seal be wilfully opened altered or broken, or if such stores be secretly conveyed away, either while such ship or vessel remains at her first port of departure, or at any port or place in the United Kingdom, or on her passage from one such port or place to another before the final departure of such ship or vessel on her foreign voyage, the master shall forfeit the sum of twenty pounds. Penalty on breaking seals, etc., placed by officers on stores from warehouse outwards.

136. If any ship departing from any port in the United Kingdom shall not bring to at such stations as shall be appointed by the Commissioners of Customs for the landing of officers from such ships, or for further examination previous to such departure, the master of such ship shall forfeit the sum of twenty pounds; and if any ship shall depart from any port with any Customs or other Government officer on board, without the consent of such officer, the master shall forfeit one hundred pounds. Penalty on not bringing to at stations; or carrying away officers.

(a) As to boarding ships or boats in order to remove colours or pendant carried contrary to the provisions of the Merchant Shipping Act, see 57 & 58 Vict. c. 60, s. 73.

Sect. 137.

Time of exportation and departure defined.

Goods prohibited by proclamation.

In case of public emergency, etc., pre-entry of export or coastwise goods may be required.

38 & 39 Vict. c. 17.

Coasting Trade.

All trade by sea from part of the U. K. to another to be deemed coastwise.

137. The time at which any goods, unless prohibited as herein-after mentioned, shall be shipped on board any export ship shall be deemed to be the time of exportation of such goods, and the time of the last clearance of any ship shall be deemed to be the time of departure of such ship, except as to any goods prohibited to be exported as contraband of war, with reference to which the exportation shall be deemed to be the actual time of the ship's departure on her outward voyage.

138. (b) The following goods may by proclamation or Order in Council be prohibited either to be exported or carried coastwise :—Arms, ammunition, and gunpowder, military and naval stores, and any articles which Her Majesty shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores, provisions, (c) or any sort of victual which may be used as food for man ; and if any goods so prohibited shall be exported or brought to any quay or other place to be shipped for exportation from the United Kingdom or carried coastwise, or be water-borne to be so exported or carried, they shall be forfeited, and the exporter or his agent or the shipper of any such goods shall be liable to the penalty of one hundred pounds.

139. The Commissioners of Customs may, by order under their hands, require due entry and clearance before shipment, and in such manner as they may direct, of any goods intended for exportation or carriage coastwise, on being satisfied that the public interests render such course expedient, and if upon such entry the goods shall not be found to correspond with the particulars contained therein, they may be detained until the cause be explained to the satisfaction of the Commissioners of Customs, who may thereupon restore the same on such terms as they may see fit ; and any exporter and shipper of any cask or package, containing any explosives as defined by the Explosives Act, 1875, (d) or by any Order in Council made pursuant thereto, shall duly enter the same before shipment thereof, and in the entry outwards or coastwise thereof shall correctly describe such explosive according to such definition ; and if he shall fail or neglect to take such entry, or if the same be false in any particular, he shall forfeit the sum of one hundred pounds, and such cask or package, and the contents thereof, shall also be forfeited.

As to Coasting Trade

140. All trade by sea from any one part of the United Kingdom to any other part thereof shall be deemed to be a coasting trade, and all ships while employed therein shall be deemed to be coasting ships, and no part of the United Kingdom, however situated with regard to any other part, shall be deemed in law, with reference to each other, to be parts beyond the seas ; and if any doubt shall at any time arise as to what or to or from what parts of the coast of the United Kingdom shall be deemed a passage by sea, the Commissioners of the Treasury may determine and direct in what cases the trade by water from one port or place in the United Kingdom to another of the same shall or shall not be deemed a trade by sea within the meaning of this or any Act relating to the Customs.

(b) This section as printed is substituted for the original section by 42 & 43 Vict. c. 21, s. 14.

(c) And the exportation of the like (other than victuals) to any country or place named therein whenever Her Majesty should judge such prohibition to be expedient

in order to prevent such arms, etc., being used against Her Majesty's subjects or forces, or against any persons engaged or who may be engaged in military or naval operations in co-operation with Her Majesty's forces ; 63 & 64 Vict. c. 44, s. 1.

(d) *Post*, p. 378.

141. Every foreign ship proceeding either with cargo or passengers or in ballast on any voyage from one part of the United Kingdom to another, or from the Islands of Guernsey, Jersey, Alderney, Sark, or Man to the United Kingdom, or from the United Kingdom to any of the said islands, or from any of the said islands to any other of them, or from any part of any of the said islands to any other part of the same, shall be subject, as to stores for the use of the crew and in all other respects, to the same laws, rules, and regulations to which British ships when so employed are now subject; but no such foreign ship nor any goods carried therein shall, during the time she is so employed, be subject to any higher or other rate of dock, pier, harbour, light, pilotage, tonnage, or other dues, duties, tolls, rates, or other charges whatsoever, or to any other rules as to the employment of pilots, or any other rules or restrictions whatsoever, than British ships employed in like manner or goods carried therein, any law charter special privilege or grant to the contrary notwithstanding; nor shall any body corporate or person having or claiming any right or title to any such higher or other rates dues duties tolls or other charges as aforesaid be entitled to any compensation in respect thereof under any law or statute relating thereto, or otherwise howsoever.

Sect. 141.

Foreign ships in coasting trade subject to same rules as British ships.

142. No goods shall be carried in any coasting ship, except such as shall be laden to be carried coastwise at some port or place in the United Kingdom and if any goods shall be taken into or put out of any coasting ship at sea or over the sea, or if any coasting ship shall touch at any place over the sea, or deviate from her voyage, unless forced by unavoidable circumstances, or if the master of any coasting ship which shall have touched at any place over the sea shall not declare the same in writing under his hand to the collector or other proper officer at the port in the United Kingdom where such ship shall afterwards first arrive, the master of such ship shall forfeit the sum of one hundred pounds. (e)

Coasting ship confined to coasting voyage.

143. (f) If any goods shall be unshipped from any ship arriving coastwise, or be shipped or water-borne to be shipped for carriage coastwise on Sundays or holidays, except by the special permission of the Commissioners of Customs, or on any other day unless in the presence or with the authority of the proper officer of Customs or unless at such times and places as shall be appointed or approved by him for that purpose, the same shall be forfeited, and the master of the ship shall forfeit the penalty of fifty pounds.

Time and place for landing and shipping coastwise.

144. (g) The master of every coasting ship shall keep or cause to be kept a cargo-book, stating the names of the ship, the master, and the port to which she belongs and of the port to which she is bound on each voyage, and unless the Commissioners of Customs otherwise direct shall at every port of lading enter in such book the name of such port, and an account of all goods there taken on board such ship, stating the descriptions of the packages and the quantities and descriptions of the goods therein, and the quantities and descriptions of any goods stowed loose, and the names of the respective shippers and consignees, so far as such particulars are known to him; and shall at every port of discharge of such goods note the respective days on which the same or any of them are delivered out of such ship, and the respective times of departure from every port of lading and of arrival at every port of discharge; and such master shall, on demand, produce such book for the inspection of any officer of Customs, who shall be at liberty to make any note or remark therein;

Master of coasting vessel to keep a cargo-book.

(e) See 47 & 48 Vict. c. 62, s. 2.

(f) This section as printed is substituted for the original section by 44 & 45 Vict. c. 12, s. 13.

(g) This section as printed is substituted for the original section by 42 & 43 Vict. c. 21, s. 14.

Sect. 144. and if upon examination any package entered in the cargo-book as containing foreign goods shall be found not to contain such goods, such package with its contents shall be forfeited, or if any package shall be found to contain foreign goods not entered in such book, such goods shall be forfeited; and if such master shall fail correctly to keep such cargo-book or to produce the same, or if at any time there be found on board such ship any goods not entered in such book as laden or any goods noted as delivered, or if any goods entered as laden or any goods not noted as delivered be not on board, the master of such ship shall forfeit the sum of twenty pounds.

Account previous to departure to be delivered to collector.

145. Before any coasting ship shall depart from her port or place of lading, an account, with a duplicate thereof, in the form No. 11 in Schedule B. to this Act, (h) and containing the several particulars indicated in or required thereby, and signed by the master, shall be delivered to the collector or other proper officer, who shall retain the duplicate, and return the original, dated and signed by him; and such account shall be the clearance of the ship for the voyage, and the transire or pass for the goods expressed therein; and if the master shall fail to deliver a correct account he shall forfeit a sum of twenty pounds: Provided, that the Commissioners of the Customs may, when deemed by them expedient, permit general transires to be given, under such regulations as they may direct, for the lading and clearance and for the entry and unloading of any coasting ship and goods, but the same may be revoked by notice in writing under the hand of the proper officer delivered to the master or owner of any ship or any of the crew on board.

Transire to be delivered in 24 hours after arrival.

146. Within twenty-four hours after the arrival of any coasting ship at the port or place of discharge, and before any goods be unladen, the transire, with the name of the place or wharf where the lading is to be discharged noted thereon, shall be delivered to the collector or other proper officer, who shall note thereon the date of delivery; and if any of the goods on board such ship be subject to any duty of excise, the same shall not be unladen without the authority or permission of the proper officer of excise; and if any goods on board any coasting ship arriving in Great Britain or Ireland from the Isle of Man shall be the growth or produce of that isle, or manufactures of that isle from materials the growth or produce thereof, or from materials not subject to duty in Great Britain or Ireland, or from materials upon which the duty shall have been paid and not drawn back in Great Britain or Ireland, the same shall not be unladen until a certificate be produced to the collector or other proper officer from the collector or other proper officer at the port or place of shipment, that proof had there been made in manner required by law that such goods were of such growth produce or manufacture, as the case may be; and if any goods shall be unladen contrary hereto, the master shall forfeit the sum of twenty pounds; and if any goods shall be laden on board any ship and carried coastwise, or be brought to any port or place in the United Kingdom for that purpose, or having been brought coastwise shall be unladen in any such port or place contrary to the Customs Acts, such goods shall be forfeited.

Goods from Isle of Man.

Penalty for illegal unloading.

Officer may go on board and examine any coasting ship.

147. Any collector or other proper officer of Customs may go on board any coasting ship in any port or place in the United Kingdom, or at any period of her voyage, search such ship, and examine all goods on board, and all goods then lading or unloading, and demand all documents which ought to be on board such ship, and may require all or any such documents to be brought to him for inspection; and the master of any ship refusing to produce

(h) *I.e.* as to foreign goods, grain, goods liable to excise, etc.

such documents on demand, or to bring the same to the collector or other proper officer when required, shall forfeit the sum of twenty pounds. Sect. 147.

148. If the master of any ship bringing any goods not liable to duty coastwise from one port of the United Kingdom to another shall desire to proceed with such goods or any of them to parts beyond the seas, he may, subject to such regulations as the Commissioners of Customs may see fit, enter such ship and goods outwards for the intended voyage without first landing the same. Goods brought coastwise may be entered outwards without landing.

As to the Channel Islands and other Possessions

British Possessions.

149. The powers and authorities vested in the Commissioners of Customs with regard to any act or thing relating to the Customs, or to trade or navigation in any of the British possessions abroad, shall continue to be vested in the governor, lieutenant-governor, or other person administering the government in any such possession; and every act required by any law to be done by or with any particular officer or at any particular place, if done by or with any such officer or at any place appointed or nominated by such governor lieutenant-governor or other person so administering such government, shall be deemed to have been done by or with such particular officer or at such particular place, as the case may be, and as required by law; and all commissions deputations and appointments granted to any officers of Customs in force at the commencement of this Act shall have the same force and effect to all intents and purposes as if the same had been granted or made in the first instance by such governor lieutenant-governor or person so administering the government of any such possession; and all bonds or other securities which shall have been given by or for any such officers and their respective securities for good conduct or otherwise shall remain in force, and shall and may be enforced and put in suit at the instance of or by directions of any such governor lieutenant-governor or person administering the government of any such possession. Powers of Commissioners as to colonies extended to governors, etc.

150. Base or counterfeit coin is hereby absolutely prohibited to be imported or brought, either by sea or inland carriage or navigation, into the British possessions in America and the Mauritius. Base coin prohibited to be imported into British possessions.

151. The Customs Acts shall extend to and be of full force and effect in the several British possessions abroad, except where otherwise expressly provided for by the said Acts, or limited by express reference to the United Kingdom or the Channel Islands, and except also as to any such possession as shall by local Act or ordinance have provided, or may hereafter, with the sanction and approbation of Her Majesty and her successors, make entire provision for the management and regulation of the Customs of any such possession, or make in like manner express provisions in lieu or variation of any of the clauses of the said Act for the purposes of such possession. Customs Acts to extend to British possessions abroad, except where otherwise provided for.

152. Any books wherein the copyright shall be subsisting, first composed or rewritten or printed in the United Kingdom, and printed or reprinted in any other country, shall be and are hereby absolutely prohibited to be imported into the British possessions abroad: Provided always, that no such books shall be prohibited to be imported as aforesaid unless the proprietor of such copyright, or his agent, shall have given notice in writing to the Commissioners of Customs that such copyright subsists, and in such notice shall have stated when the copyright will expire; and the said Commissioners shall cause to be made and transmitted to the several ports in the British possessions abroad, from time to time to be publicly exposed there, lists of books respecting which such notice Foreign reprints of books under copyright prohibited.

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shall have been duly given, and all books imported contrary thereto shall be forfeited; but nothing herein contained shall be taken to prevent Her Majesty from exercising the powers vested in her by the tenth and eleventh Victoria, chapter ninety-five, intituled, "An Act to amend the law relating to the protection in the colonies of works entitled to copyright in the United Kingdom," to suspend in certain cases such prohibition.

Foreign manu-
factures with
British marks.

153. If any articles of foreign manufacture, and any packages of such articles, bearing any names, brands, or marks being or purporting to be the names, brands, or marks of manufacturers resident in the United Kingdom shall be imported into any of the British possessions abroad, the same shall be forfeited.

Report of ship
and cargo on
arrival at
Channel
Islands.

154. The master of every ship arriving in the Channel Islands, whether laden or in ballast, shall come directly, and before bulk be broken, to the Custom House for the port or district where he arrives, and there make a report in writing to the proper officer of Customs, in the same form and manner as herein-before provided on the arrival of any ship in Great Britain or Ireland from parts beyond the seas, so far as the same may be applicable; and if any goods be unladen from any ship before such report be made, or if the master fail to make such report, or make an untrue report, or do not truly answer the questions demanded of him, he shall forfeit the sum of fifty pounds, and if any goods be not reported such goods shall be forfeited.

Entry of goods
to be laden or
unladen at
Channel
Islands; regu-
lations.

155. No goods shall be laden or water-borne to be laden on board any ship, or unladen from any ship, in the Channel Islands, until due entry shall have been made of such goods and warrant granted for the lading or unlading of the same; and no goods shall be so laden or water-borne or so unladen in the said Channel Islands except at some place at which an officer of the Customs is appointed to attend the lading and unlading of goods, or at some place for which a sufferance shall be granted by the proper officer of Customs for the lading and unlading of such goods, and in the presence or with the permission of such officer; but the Commissioners of Customs may make such regulations for the carrying coastwise of any goods, or for the removing of any goods for shipment in the said islands, as to them shall appear expedient; and all goods laden water-borne or unladen contrary hereto, or to any regulations to be so made, shall be forfeited. (i)

Goods grown
or manufac-
tured in
Channel
Islands may
be imported
duty free.

156. Any goods of the growth of the Channel Islands, and any goods manufactured in the said islands from materials of the growth of the said islands, or from materials not subject to duty in Great Britain or Ireland, or from materials upon which the duty has been paid in Great Britain or Ireland, and upon which no drawback has subsequently been granted, may be imported into Great Britain or Ireland from the said islands respectively without payment of any duty, and such goods shall not be deemed to be included in any charge of duties imposed by any Act on the importation of goods generally from parts beyond the seas, except as herein-after provided; and any person who is about to export from the Channel Islands to Great Britain or Ireland any such goods may go before a magistrate of such islands and make and sign before him a declaration that such goods, stating the quantity quality and description thereof, and the number and denomination of the packages containing the same, are of such growth or produce or of such manufacture, and such magistrate shall administer and sign such declaration; and thereupon the governor, lieutenant-governor, or other proper authority of the island from which the goods are to be exported shall, upon the delivery to him of such declaration, grant a certificate under his hand of the proof contained in such declaration, stating the ship in which and the port to

(i) See 46 & 47 Vict. c. 55, s. 3, ante.

which the goods are to be exported; and such certificate shall be the proper document to be produced at such port in proof that the goods mentioned therein are of the growth produce or manufacture of such island respectively, and before any such goods shall be admitted to entry at any port in Great Britain or Ireland as being the produce of the said islands (if any benefit attach to such distinction), the master of the ship importing the same shall deliver such certificate to the collector or other proper officer: Provided always, that such goods shall be charged with any proportion of such duties as shall fairly countervail any duties of excise payable on the like goods the produce or manufacture of the part of Great Britain or Ireland into which they shall be imported, or payable upon any of the materials from which such goods are manufactured; and all goods manufactured in any of the said islands from any other materials than the materials aforesaid shall be declared and taken to be foreign goods.

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157. If in the Channel Islands any goods, the importation whereof into the United Kingdom is prohibited, or any goods in any packages or in any manner in which the same cannot be legally imported into the United Kingdom, shall be found concealed or prepared for shipment, or be shipped removed or brought to any wharf quay or other place in the said islands, or be water-borne to be shipped on board any ship without the authority of the proper officers of Customs of the said islands, such goods shall be forfeited; and any person who shall so ship bring or water-bear to be shipped any such goods, or be otherwise knowingly concerned therein, or in whose custody or possession the same shall be found, shall forfeit the sum of one hundred pounds, or treble the value of the goods, at the election of the Commissioners of Customs.

Prohibited goods not to be shipped from the Channel Islands to the U. K.

158. No ship or boat belonging wholly or in part to Her Majesty's subjects shall sail from the Channel Islands without a clearance, whether in ballast or having a cargo; and if with cargo, the master shall give bond to Her Majesty in double the value of such cargo for the due landing thereof at the port for which such ship or boat clears; and shall truly answer such questions as may be put to him by the principal or other proper officer of Customs touching such ship and her intended voyage; and every such ship or boat not having such clearance, or which, having a clearance for her cargo, shall be found light, or to have discharged any part of her cargo before arrival at the port or place of discharge specified in the clearance, shall be forfeited; and the master of every ship so departing without clearance, or refusing to answer or not answering truly any such questions, or discharging any part of the cargo of such ship before arrival at her port or place of discharge, shall forfeit the sum of fifty pounds.

Ships not to sail from Channel Islands without clearance.

159. The Commissioners of Customs may from time to time establish regulations as to the quantities, custody, and disposal of tobacco spirits and tea to be used as stores by the master crew and passengers of any vessel about to depart from the Channel Islands to any port in the United Kingdom, or to any fishing grounds at sea, having regard to the time that will be occupied in the contemplated voyage, the tonnage of the vessel, and the number of her crew and passengers, the particulars of such stores to be noted on the clearance of the vessel; and if they or any part thereof be landed in the United Kingdom from the said vessel contrary to the regulations so established, or without the knowledge or permission of the proper officer of the customs, they shall be forfeited, and the master of such vessel shall, on proof of such landing or unshipment, forfeit the penalty of twenty pounds, and if any stores in excess of the quantity allowed by such regulations be found on board any ship so about to depart, they shall be forfeited.

Stores for vessels departing from the Channel Islands.

161. All laws byelaws usages or customs at this time, or which hereafter shall be in practice, or endeavoured or pretended to be in force or practice, in

Colonial laws repugnant to

Sect. 161. any of the British possessions, which are in anywise contrary to the Customs Acts, are and shall be null and void.

Acts of Parliament void.

As to importing and exporting spirits into and from Channel Islands in ships of 40 tons and upwards.

162. No spirits (except rum or British spirits) shall be imported into or exported from the Channel Islands or any of them, or be removed from any one to any other of the said islands, or be carried coastwise from any one part to any other part of any one of the said islands, or shall be shipped in order to be so removed or carried in any ship other than of the burden of forty tons or upwards, or in any cask or other vessel capable of containing liquids not being of the size or content of nine gallons at the least if foreign, or nine gallons at the least if British or Irish; and all spirits imported exported removed carried shipped or water-borne to be so shipped removed or carried contrary hereto, shall be forfeited, together with the ship, and any boat importing exporting removing or carrying the same: Provided always, that nothing herein contained shall extend to any spirits imported in any such ship in glass bottles as part of the cargo, nor to any spirits being really intended for the consumption of the seamen and passengers of such ship during their voyage and not being more in quantity than is necessary for that purpose, nor to any boat of less burden than ten tons for having on board at any one time any foreign spirits of the quantity of ten gallons or under, such boat having a license from the proper officer of Customs at either of the islands of Guernsey or Jersey for the purpose, being employed in carrying commodities for the supply of the island of Sark, which license such officer is hereby required to grant without fee or reward; but if any such boat shall have on board at any one time any greater quantity of spirits than ten gallons, unless in casks or packages of the size and content of nine gallons (*k*) at the least if foreign, or nine gallons at the least if British or Irish, such spirits and boats shall be forfeited.

Importation of tobacco, etc., into Channel Islands.

163. No tobacco cigars or snuff shall be imported into the Channel Islands, nor be carried from any one of the said islands to another of them, or from one part of any of the said islands to another part of the same, unless in ships of not less burden than forty tons, nor unless in packages of the gross weight of not less than eighty pounds, (*l*) nor unless the provisions in and under which the like sort of goods may be legally imported into the United Kingdom are complied with; and all tobacco, cigars, or snuff imported into the said islands, or found carried shipped or removed contrary hereto, or which shall be found or discovered to have been on board any ship or boat within one league of the coasts thereof, shall be forfeited, together with the ship or boat.

Malta deemed to be in Europe.

164. The Island of Malta and its dependencies shall be deemed to be in Europe.

SMUGGLING.
Restrictions on small craft.

As to the Restrictions on Small Craft and the Regulations for the Prevention of Smuggling

General regulations by Commissioners for vessels not exceeding 100 tons.

169. The Commissioners of Customs may from time to time, by order under their hands, make such general regulations as they shall deem expedient in respect of vessels and boats not exceeding one hundred tons burden, for the purpose of prescribing, with reference to the tonnage, build, or description of such vessels or boats, the limits within which the same may be employed, the mode of navigation, the manner in which such vessels or boats shall be so employed, and, if armed, the number and description of arms, the quantity of ammunition, and such other terms particulars conditions and restrictions as the said Commissioners may think fit, and also from time to time may revoke, alter,

(*k*) 59 & 60 Vict. c. 28, s. 4.

(*l*) S. 5.

or vary such regulations; and the general regulations made under any former Act, and in force at the time of the passing of this Act, shall remain and continue in force until altered, varied, or revoked.

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170. Every ship or boat which shall be used or employed in any manner contrary to the regulations prescribed by the Commissioners of Customs shall be liable to forfeiture, unless the same shall have been specially licensed by the Commissioners of Customs to be so used or employed, as next herein-after provided.

Forfeiture of vessels used contrary to regulations.

171. The Commissioners of Customs may, if they shall so think fit, grant licenses in respect of any vessels or boats not exceeding one hundred tons burden, upon such terms and conditions and subject to such restrictions and stipulations as in such licenses mentioned, notwithstanding any general regulations made in pursuance of this Act, whether the said regulations shall be revoked or not; and if any vessel or boat so licensed shall not comply with the conditions imposed by or expressed in any such license, or if such vessel or boat shall be found without having such license on board, such vessel or boat shall be forfeited.

Commissioners may grant special licenses on terms.

172. If any vessel or boat shall be used in the importation, landing, removal, carriage, or conveyance of any uncustomed or prohibited goods, the same shall be forfeited, and the owner and the master of every such vessel or boat shall each forfeit and pay a penalty equal to the value of such vessel or boat, not in any case exceeding five hundred pounds.

Forfeiture of vessels used in removal of uncustomed or prohibited goods.

173. The Commissioners of Customs may revoke, alter, or vary any license or licenses granted under any former Act, or which may hereafter be granted under this or any other Act relating to the Customs.

Commissioners may revoke licenses.

174. All the regulations which shall be so made by the Commissioners of Customs relating to vessels and boats, and the power to grant revoke or vary such licenses, shall extend to the Channel Islands.

Regulations to extend to Channel Islands.

175. The owner of every ship belonging wholly or in part to any of Her Majesty's subjects shall paint or cause to be painted upon the outside of the stern of every boat belonging to such ship the name of such ship and the port or place to which she belongs, and the master's name withinside the transom, in white or yellow Roman letters, not less than two inches in length, on a black ground, on pain of the forfeiture of every such boat not so marked, wherever the same shall be found.

Boats of vessel to have thereon the name of vessel, port, and master.

176. The owner of every vessel or boat, whether decked, partially decked, or open, not being of the burden of one hundred tons, and not belonging to any ship, shall paint or cause to be painted upon the outside of the stern of such boat in white or yellow Roman letters, of not less than two inches in length, on a black ground, the name of the owner of the boat and the port or place to which she belongs, on pain of the forfeiture of such boat not so marked, wherever the same shall be found.

Boats not belonging to ships to have name of owner and port thereon.

177. If any goods liable to the payment of duties shall be unshipped from any ship or boat in the United Kingdom (Customs or other duties not being first paid or secured), or if any prohibited goods whatsoever shall be imported or brought into any part of the United Kingdom; or if any goods shall be removed from any ship quay wharf or other place, previously to the examination thereof by the proper officer of Customs, or being entered to be warehoused shall be carried into the warehouse, unless under the care or authority of such officer and in such manner and by such roads or ways and within such time as he shall direct; or if any goods entered to be warehoused, after the landing thereof, shall be removed or withdrawn from any quay, wharf, or other place in the United Kingdom, so that no sufficient account is taken thereof by the proper officer, or

Forfeiture of goods unshipped without payment of duty and prohibited goods, etc.

Sect. 177. so that the same are not duly warehoused; or if any goods whatever which shall have been warehoused or otherwise secured in the United Kingdom, either for home consumption or exportation, or shall have been delivered from any warehouse or other place without payment of duty for removal to any other warehouse or place, shall be clandestinely or illegally removed from or out of any warehouse or place of security, or shall not be duly delivered at the place at which such goods were destined to be removed; or if any goods which are prohibited to be exported shall be put on board any ship or boat with intent to be laden or shipped for exportation, or shall be brought to any quay wharf or other place in the United Kingdom in order to be put on board any ship for the purpose of being exported; or if any goods which are prohibited to be exported shall be found in any package produced to any officer of Customs as containing goods not so prohibited; or if any goods subject to any duty or restriction in respect of importation, or which are prohibited to be imported into the United Kingdom, shall be found or discovered to have been concealed in any manner on board any ship or boat within the limits of any port of the United Kingdom, or shall be found either before or after landing to have been concealed in any manner on board any such ship or boat, within such limits as aforesaid; then and in every of the foregoing cases all such goods shall be forfeited, together with any goods which shall be found packed with or used in concealing them.

Restricted goods to be deemed run.

178. All goods the importation of which is in any way restricted, which are of a description admissible to duty, and which shall be found or seized in the United Kingdom under the Customs Acts, shall, for the purpose of proceeding for the forfeiture of them or for any penalty incurred in respect of them, be deemed and taken to be, on the trial or hearing thereof, goods liable to and unshipped without payment of duties, unless the contrary be proved.

Forfeiture of vessel arriving in U. K. or Channel Islands, or within three leagues thereof, having prohibited goods on board or attached thereto.

179. If any ship or boat shall be found or discovered to have been within any port bay harbour river or creek of the United Kingdom or the Channel Islands, or within three leagues of the coast thereof if belonging wholly or in part to British subjects, or having half the persons on board subjects of Her Majesty, or within one league if not British, (m) having false bulkheads false bows double sides or bottom, or any secret or disguised place adapted for concealing goods, or any hole tube pipe or device adapted for running goods, or having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner any spirits tobacco or snuff in packages of any size and character in which they are prohibited to be imported into the United Kingdom or the Channel Islands, or any spirits or tobacco or snuff imported contrary to the Customs Acts, or any tobacco stalks, tobacco stalk flour, or snuff work, or which shall be found or discovered to have been within three leagues of any part of the coast of the United Kingdom from which any part of the lading of such ship or boat shall be or have been thrown overboard, or on board which any goods shall be or have been staved or destroyed to prevent seizure, every such ship or boat, together with any such spirits, tobacco, or snuff, tobacco stalks, tobacco stalk flour, or snuff work, and all packages casks or other vessels containing the same, and everything packed therein, and also any cordage or other articles adapted and prepared for slinging or sinking small casks, or any casks or other vessels whatsoever of less size or content than twenty gallons of the description used for the smuggling of spirits found on board, shall be forfeited; and every person who shall be found or discovered to have been on board any ship or boat liable to forfeiture as aforesaid, within three leagues of the coast if a British subject,

(m) See *Att.-Gen. v. Schiers*, 2 C. M. & R. 286.

or within one league if a foreigner, or on board any vessel in Her Majesty's service, or on board any foreign post office packet employed in carrying mails between any foreign country and the United Kingdom having on board any spirits or tobacco in such packages as aforesaid, or any tobacco stalks, tobacco stalk flour, or snuff work, shall forfeit a sum not exceeding one hundred pounds; and every such person may be detained and taken before any justice, to be dealt with as herein-after directed: Provided, that no person shall be detained whilst actually on board any vessel in the service of a foreign state or country: and provided also that no person shall be liable to conviction under this section unless there shall be reasonable cause to believe that such person was concerned in or privy to the illegal act or thing proved to have been committed. (n)

180. If any ship or boat belonging wholly or in part to Her Majesty's subjects, or having one half of the persons on board subjects of Her Majesty, shall not bring to upon signal made by any vessel or boat in Her Majesty's service or in the service of the Revenue, by hoisting the proper pendant and ensign, whereupon chase shall be given, and any person on board such ship or boat shall, during chase or before such ship or boat shall bring to, throw overboard any part of her lading, or shall stave or destroy any part thereof to prevent seizure, such ship or boat shall be forfeited; and all persons escaping from any such ship or boat during chase shall be deemed subjects of Her Majesty, unless the contrary be proved. (o)

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Forfeiture of vessel belonging to Her Majesty's subjects, etc., throwing overboard any goods during chase, etc.

181. If any ship or boat liable to seizure or examination under the Customs Acts shall not bring to when required so to do, the master of such ship or boat shall forfeit the sum of twenty pounds; and on such ship or boat being chased by any vessel or boat in Her Majesty's navy, having the proper pendant and ensign of Her Majesty's ships hoisted, or by any vessel or boat duly employed for the prevention of smuggling, having a proper pendant and ensign hoisted, it shall be lawful for the captain, master, or other person having the charge or command of such vessel or boat in Her Majesty's navy, or employed as aforesaid (first causing a gun to be fired as a signal), to fire at or into such ship or boat, and such captain, master, or other person acting in his aid or by his direction shall be and is hereby indemnified and discharged from any indictment penalty action or other proceeding for so doing.

Penalty on vessel not bringing to when required to, £20.

182. Any officer of Customs or other person duly employed for the prevention of smuggling may go on board any ship or boat which shall be within the limits of any port of the United Kingdom or the Channel Islands, and rummage and search the cabin (p) and all other parts of such ship or boat for prohibited or uncustomed goods, and remain on board such ship or boat so long as she shall continue within the limits of such port.

Power to search vessels within limits of ports.

(n) 50 & 51 Vict. c. 7, s. 1. No ship is liable under s. 179 unless under 250 tons burden. In other cases the Commissioners may fine and require a sum not exceeding £500 to be deposited with the collector. In default the ship may be detained: 53 & 54 Vict. c. 56, ss. 1, 2. The goods and persons on board are still liable: s. 4.

(o) The following cases of forfeiture arise under the Merchant Shipping Act, 1894. If any person wilfully makes a false declaration touching the qualification of himself or of any other person, or of any corporation to own a British ship or any share therein: 57 & 58 Vict. c. 60, s. 67. If a person uses the British flag and as-

sumes the British national character on board a ship owned in whole or in part by any persons not qualified to own a British ship for the purpose of making the ship appear to be a British ship: s. 69. If the master or owner of a British ship does anything or permits anything to be done, or carries or permits to be carried any papers or documents with intent to conceal the British character of the ship from any person entitled by British law to enquire into the same or with intent to assume a foreign character or with intent to deceive any person so entitled as aforesaid: s. 70. See ss. 72, 76.

(p) See *Anderson v. Reid*, 86 L. T. 713.

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Forfeiture of vessel in port with a cargo, and afterwards found light or in ballast, and cargo unaccounted for.

Persons may be searched if officers have reason to suspect smuggled goods are concealed upon them.

Rescuing goods.

Rescuing persons.

Assaulting or obstructing officers.

Attempting the foregoing offences.

Penalty.

Persons before search may require to be taken before a justice or officer of Customs.

183. If any ship or boat whatever shall be found within the limits of any port of the United Kingdom with a cargo on board, and such ship or boat shall afterwards be found light or in ballast, and the master is unable to give a due account of the port or place within the United Kingdom where such ship or boat shall have legally discharged her cargo, such ship or boat shall be forfeited.

184. (g) Any officer of Customs or other person duly employed in the prevention of smuggling may search any person on board any ship or boat within the limits of any port in the United Kingdom or the Channel Islands, or any person who shall have landed from any ship or boat, provided such officer or other person duly employed as aforesaid shall have good reason to suppose that such person is carrying or has any uncustomed or prohibited goods about his person.

A person shall be guilty of an offence—

- (1.) If he staves breaks or destroys any goods to prevent the seizure thereof by an officer of Customs or other person authorised to seize the same.
- (2.) If he rescues or staves breaks or destroys to prevent the securing thereof any goods seized by an officer of Customs or other person authorized to seize the same.
- (3.) If he rescues any person apprehended for any offence punishable by fine or imprisonment under the Customs Acts.
- (4.) If he prevents the apprehension of any such person.
- (5.) If he assaults or obstructs any officer of Customs, or any officer of the army navy marines coastguard, or other person duly employed for the prevention of smuggling, going remaining or returning from on board a ship or boat within the limits of any port in the United Kingdom or the Channel Islands, or in searching such a ship or boat, or in searching a person who has landed from any such ship or boat, or in seizing any goods liable to forfeiture under the Customs Acts, or otherwise acting in the execution of his duty.
- (6.) If he attempts or endeavours to commit, or aids abets or assists in the commission of any of the offences mentioned in this section.

And a person so offending shall for each such offence forfeit the penalty of not exceeding one hundred pounds, and he may either be detained or proceeded against by information and summons.

185. Before any person shall be searched he may require to be taken with all reasonable despatch before a justice, or before the collector or other superior officer of Customs, who shall, if he see no reasonable cause for search, discharge such person, but if otherwise, direct that he be searched, and if a female she shall not be searched by any other than a female; but if any officer shall without reasonable ground cause any person to be searched, such officer shall forfeit and pay a sum not exceeding ten pounds. If any passenger or other person on board any such ship or boat, or who may have landed from any such ship or boat, shall, upon being questioned by any officer of Customs or other person duly employed for the prevention of smuggling whether he has any foreign goods upon his person or in his possession or in his baggage, deny the same, and any such goods shall after such denial be discovered to be or to have been upon his person or in his possession or in his baggage, such goods shall be forfeited, and such person shall forfeit one hundred pounds, or treble the value of such goods, at the election of the Commissioners of Customs.

(g) This section as printed is substituted for the original section by 44 & 45 Vict. c. 12, s. 13.

186. Every person who shall import or bring, or be concerned in importing or bringing into the United Kingdom any prohibited goods or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unshipped or not; or shall unship, or assist or be otherwise concerned in the unshipping of any goods which are prohibited, or of any goods which are restricted and imported contrary to such restriction, or of any goods liable to duty, the duties for which have not been paid or secured; or shall deliver, remove, or withdraw from any ship, quay, wharf, or other place previous to the examination thereof by the proper officer of Customs, unless under the care or authority of such officer, any goods imported into the United Kingdom or any goods entered to be warehoused after the landing thereof, so that no sufficient account is taken thereof by the proper officer, or so that the same are not duly warehoused; or shall carry into the warehouse any goods entered to be warehoused or to be re-warehoused, except with the authority or under the care of the proper officer of the Customs, and in such manner, by such persons, within such time, and by such roads or ways as such officer shall direct; or shall assist or be otherwise concerned in the illegal removal or withdrawal of any goods from any warehouse or place of security in which they shall have been deposited; or shall knowingly harbour, keep, or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept, or concealed, any prohibited, restricted, or uncustomed goods, or any goods which shall have been illegally removed without payment of duty from any warehouse or place of security in which they may have been deposited; or shall knowingly acquire possession of any such goods; or shall be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any such goods with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods; or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duties of Customs, or of the laws and restrictions of the Customs relating to the importation, unshipping, landing, and delivery of goods, or otherwise contrary to the Customs Acts; shall for each such offence forfeit either treble the value of the goods, including the duty payable thereon, or one hundred pounds, at the election of the Commissioners of Customs; and the offender may either be detained or proceeded against by summons. (r)

Sect. 186.

Illegally importing.
Unshipping.

Removing from quay, wharf, etc.

Carrying goods into warehouse without authority.

Removing from warehouse.

Harbouring.

Carrying.

Evasion of duties of Customs.

Penalty treble value, or £100.

188. (s) All persons to the number of three or more who shall assemble for the purpose of unshipping landing running carrying concealing or having so assembled shall unship land run carry convey or conceal any spirits tobacco or any prohibited restricted or uncustomed goods, shall each forfeit a penalty not exceeding five hundred pounds nor less than one hundred pounds.

Penalty for assembling to run goods.

189. Every person who shall by any means procure or hire, or shall depute or authorise any other person to procure or hire, any person or persons to assemble for the purpose of being concerned in the landing or unshipping or carrying conveying or concealing any goods which are prohibited to be imported, or the duties for which have not been paid or secured, shall be imprisoned for any term not exceeding twelve months; and if any person engaged in the commission of any of the above offences be armed with firearms or other offensive weapons, or whether so armed or not be disguised in any way, or being so armed or disguised shall be found with any goods liable to forfeiture under the Customs Acts within five miles of the seacoast or of any tidal river,

Procuring or hiring persons to assemble to run goods.

(r) See 52 & 53 Vict. c. 42, s. 6.

(s) This section as printed is substituted for the original section by 42 & 43

Vict. c. 21, s. 14.

Sect. 189. shall be imprisoned with or without hard labour for any term not exceeding three years.

Penalty on persons signalling smuggling vessels.

190. No person shall, after sunset and before sunrise between the twenty-first day of September and the first day of April, or after the hour of eight in the evening and before the hour of six in the morning at any other time of the year, make, aid, or assist in making any signal in or on board or from any ship or boat, or on or from any part of the coast or shore of the United Kingdom, or within six miles of any part of such coast or shore, for the purpose of giving notice to any person on board any smuggling ship or boat, whether any person so on board of such ship or boat be or not within distance to notice any such signal; and if any person, contrary to the Customs Acts, shall make or cause to be made, or aid or assist in making, any such signal, he shall be guilty of a misdemeanor, and may be stopped arrested detained and conveyed before any justice, who, if he see cause, shall commit the offender to the next county gaol, there to remain until delivered by due course of law; and it shall not be necessary to prove on any indictment or information in such case that any ship or boat was actually on the coast; and the offender, being duly convicted, shall, by order of the court before whom he shall be convicted, either forfeit the penalty of one hundred pounds, or, at the discretion of such court, be committed to a gaol or house of correction, there to be kept to hard labour for any term not exceeding one year.

Any person may prevent signals.

192. Any person whatsoever may prevent any signal being made as aforesaid, and may go upon any lands for that purpose, without being liable to any indictment suit or action for the same.

Persons shooting at boats belonging to navy or revenue service, guilty of felony.

193. If any person shall maliciously shoot at any vessel or boat belonging to Her Majesty's navy, or in the service of the Revenue, or shall maliciously shoot at, maim, or wound any officer of the army navy marines, or coastguard being duly employed in the prevention of smuggling and on full pay, or any officer of Customs or Excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the execution of his office or duty, every person so offending, and every person aiding abetting or assisting therein, shall, upon conviction, be adjudged guilty of felony, and shall be liable, at the discretion of the court, to penal servitude for any term not less than five years, or to be imprisoned for any term not exceeding three years.

Officers may haul their vessels on shore without being liable to action.

194. The officer in charge of any vessel or boat employed for the prevention of smuggling or acting in his aid may haul any such vessel or boat upon any part of the coasts of the United Kingdom, or the shores banks or beaches of any river creek or inlet of the same, (not being a garden or pleasure ground, or place ordinarily used for any bathing machine or machines,) which shall be deemed most convenient for that purpose, and moor any such vessel or boat on such part of the aforesaid coasts shores banks and beaches below high-water mark, and over which the tide flows on ordinary occasions, and to continue such vessel or boat so moored as aforesaid for such time as he shall deem necessary and proper; and such officer, or person aiding him, shall not be liable to any indictment action or suit for so doing.

Penalty on persons cutting adrift vessels belonging to the Customs.

195. Every person who shall cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any other way injure or conceal any vessel boat buoy anchor chain rope or mark in the charge of or used by any person for the prevention of smuggling, or in or for the use of the service of the Customs, shall for every such offence forfeit the sum of ten pounds.

Officers of army, etc., may patrol coasts

196. Any officer of the army, navy, marines, or coastguard being duly employed for the prevention of smuggling, and on full pay, or any officer of Customs, or any person acting in his aid, or duly employed for the prevention

of smuggling, when on duty, may patrol upon and pass freely along and over any part of the coasts of the United Kingdom, or any railway, or the shores or banks of any river, creek, or inlet of the same (not being a garden or pleasure ground); and any such officer or person so patrolling shall not be liable to any indictment, action, or suit for so doing. **Sect. 196.**
without being liable to action.

199. If any person liable to be detained under the Customs Acts shall not be detained at the time of committing the offence, or being detained shall escape, he may afterwards be detained at any place in the United Kingdom within three years from the time such offence was committed, and if detained may be taken before any justice to be dealt with as if he had been detained at the time of committing such offence, or if not so detained may be proceeded against by information and summons. Any person escaping may afterwards be detained.

200. If any person not being an officer of the navy, Customs, or Excise shall intermeddle with or take up any spirits being in casks of less content than nine (t) gallons found floating upon or sunk in the sea, such spirits shall be forfeited, together with any vessel or boat in which they may be found; but if any person shall give information to any such officer so that seizure of such spirits may be made, he shall be entitled to such reward as the Commissioners of Customs may direct. Only officers to take up spirits in casks sunk or floating on the sea.

201. If any person shall offer for sale any goods under pretence that the same are prohibited, or have been unshipped and run ashore without payment of duties, all such goods (although not liable to any duties or prohibited) shall be forfeited, and every person so offering the same for sale shall forfeit treble the value of such goods. Penalty for offering goods for sale on pretence of being smuggled.

202. All ships boats carriages, or other conveyances, together with all horses and other animals and things made use of in the importation landing removal or conveyance of any uncustomed prohibited restricted or other goods liable to forfeiture under the Customs Acts shall be forfeited, and all ships boats goods carriages or other conveyances, together with all horses and other animals and things liable to forfeiture, and all persons liable to be detained for any offence under the Customs Acts, or any other Act whereby officers of Customs are authorised to seize or detain persons, goods, or other things, shall or may be seized or detained (u) in any place either upon land or water by any of the following persons, being duly employed for the prevention of smuggling, that is to say, any officer of Her Majesty's army navy marines, coastguard Customs, or Excise, or by any person having authority from the Commissioners of Customs . . . to seize, or by any constable or police officer of any county city or borough in the United Kingdom so employed with the sanction of the Forfeiture of ships, etc., used in removal of raw goods.

(t) 59 & 60 Vict. c. 28, s. 4.

(u) The following cases of detention arise under the Merchant Shipping Act, 1894. On a certificate from a surveyor of ships or Board of Trade inspector under that Act that a ship is insufficiently or inaccurately marked: 57 and 58 Vict. c. 60, s. 7. If any person acts or suffers any person under his control to act in contravention of the rules as to the name of a ship, or omits to do or suffers any person under his control to omit to do anything required by that section—s. 47—(except in the case of an application being made under the section with respect to a foreign ship which not having at any previous time been registered as a British

ship has become a British ship). If a ship attempts to proceed to sea without a clearance or transire inscribed with the name of the nation to which she belongs: s. 68. If the certificate of the medical inspector is not produced: s. 202. If in the case of ships going through the Suez Canal or round the Cape of Good Hope or Cape Horn, the inspector find the provisions and water uninspected or deficient in quality: s. 206. If a passenger steamer carrying more than twelve passengers attempts to ply or to go to sea without the certificate of survey of the Board of Trade: s. 271. As to emigrants, see s. 314.

Sect. 202.

magistrates having jurisdiction therein, or under or by virtue of any Act in relation thereto; and all ships boats goods carriages or other conveyances, together with all horses and other animals and things so seized, shall forthwith be delivered into the care of the collector or other proper officer of Customs at the nearest Custom House; and the forfeiture of any ship boat carriage animal or other things shall be deemed to include the tackle apparel and furniture thereof, and the forfeiture of any goods shall be deemed to include the package in which the same are found and all the contents thereof. (y)

Power of officers of Customs to stop carts, etc., and search for goods.

203. Any officers of Customs Excise coastguard constabulary (z) police or other person duly employed for the prevention of smuggling, may upon reasonable suspicion or probable cause stop and examine any cart waggon or other conveyance, to ascertain whether any smuggled goods are contained therein; and if none shall be found the officer or other person shall not on account of such stoppage and examination be liable to any prosecution or action at law on account thereof; and any person driving or conducting such cart, waggon, or other conveyance refusing to stop or allow such examination when required in the Queen's name, shall forfeit not less than twenty nor more than one hundred pounds.

Goods stopped by police officers may be retained until trial of persons charged with stealing them.

206. If any such goods liable to duties of Customs, or prohibited to be imported, or in any way restricted, shall be stopped or taken by any police officer on suspicion that the same had been feloniously stolen, he may carry the same to the police office to which the offender if detained is taken, there to remain until and in order to be produced at the trial of such offender, and in such case the officer is required to give notice in writing to the Commissioners of Customs of such stoppage or detention, with the particulars of the goods, but immediately after such stoppage if the offender be not detained, or if detained immediately after the trial of such offender, such officer shall convey to and deposit the goods in the nearest Customs warehouse, to be proceeded against according to law; and if any police officer so detaining any such goods shall neglect to convey the same to such warehouse, or to give the notice herein-before prescribed, he shall forfeit a sum not exceeding twenty pounds.

Notice to be given by seizing officer to owner of ships or goods seized, and seizures to be claimed within one month.

207. Whenever any seizure shall be made, unless in the possession or in the presence of the offender, master, or owner as forfeited under the Customs Acts or under any Act by which Customs officers are empowered to make seizures, the seizing officer shall give notice in writing of such seizure and of the grounds thereof to the master or owner of the things seized, if known, either by delivering the same to him personally or by letter addressed to him and transmitted by post to or delivered at his last known place of abode or business; if known; and all seizures made under the Customs Acts or under any Act by which Customs officers are empowered to make seizures shall be deemed and taken to be condemned, and may be sold or otherwise disposed of in such manner as the Commissioners of Customs may direct, unless the person from whom such seizure shall have been made, or the master or owner thereof, or some person authorised by him, shall, within one calendar month from the day of seizure, give notice in writing, if in London, to the person seizing the same, or to the secretary or solicitor for the Customs, and if elsewhere, to

(y) If the seizure extend to property to which the power does not apply, although in the judgment of the officer it did apply it is no justification: *Warne v. Varley*, 6 T. R. 443; *Grindley v. Barker*, 1 B. & P. 229. See *Lord Advocate v. Crookshanks*, 15 R. 995. The officers may ap-

parently go outside the usual limits or their jurisdiction for the purposes of the section: *R. v. Barfoot*, 13 East, 506. There can be no alienation so as to avoid forfeiture: *Lockyer v. Offley*, 1 T. R. 252.

(z) See also 1, 20 & 21 Vict. c. 40, s. 5, and 24 & 25 Vict. c. 91, s. 22.

the person seizing the same, or to the collector or other chief officer of the Customs at the nearest port, that he claims the things so seized or intends to claim them, whereupon proceedings shall be taken for the forfeiture and condemnation thereof either by information filed in the Exchequer (a) Division of the High Court of Justice in England on the Revenue side, or exhibited before any justice of the peace; but if any things so seized shall be of a perishable nature, or consist of horses or other animals, the same may by direction of the Commissioners of Customs be sold, and the proceeds thereof retained to abide the result of any claim that may legally be made in respect thereof.

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208. All seizures whatsoever which shall have been made and condemned under the Customs Acts or any other Act by which seizures are authorised to be made by officers of Customs shall be disposed of in such manner as the Commissioners of Customs may direct.

Disposal of seizures.

209. When any seizure shall have been made, or any fine or penalty incurred or inflicted, or any person committed to prison for any offence under the Customs Acts, the Commissioners of the Treasury or Customs may direct the restoration of such seizure, whether condemnation shall have taken place or not, or waive proceedings, or mitigate or remit such fine or penalty, or release from confinement either before or after conviction such person on any terms and conditions as they shall see fit.

Power to restore seizures and mitigate penalties.

Legal Proceedings, etc.

234. It shall be lawful for Her Majesty in Council, (b) or any two of the Lords of Her Majesty's Privy Council, from time to time, by her or their order, to require that no person on board any ship coming to any port in the United Kingdom, the Channel Islands, or the Isle of Man, from or having touched at any place out of the United Kingdom abroad where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit such vessel before the state of health of the persons on board shall have been ascertained, on examination by the proper officer of Customs, at such place or places as may from time to time be appointed by the Commissioners of Customs for such purpose, and before permission to land shall have been given by such officer, . . .

Persons arriving in ships from infected places not to land before examination.

257. All suits indictments or informations brought or exhibited for any offence against the Customs Acts in any court or before any justice, shall be brought or exhibited within three years next after the date of the offence committed. (c)

Limitation of time for suits, etc.

273. Any person appointed to be solicitor or assistant solicitor of Her Majesty's Customs, or any clerk duly appointed to act on his behalf or under his or their directions, shall and may in any case relating to the Customs, or under the direction of the Commissioners of Her Majesty's Treasury or Customs, act as counsel solicitor attorney-at-law advocate or writer to the signet in the prosecution conduct or defence of any such case in any court jurisdiction or place in which such case may be instituted, and any such solicitor assistant solicitor or clerk and any officer of Customs, under the order and directions of the Commissioners of Customs, may prosecute defend or conduct any proceeding before any justice in any matter relating to the Customs to be heard or determined by him.

Solicitors' clerks and officers of Customs may conduct cases.

(a) Now K. B.

(b) S. Local Government Board, 60 & 61 Vict. c. 38, s. 88.

(c) See *R. v. Thompson*, 16 Q. B. 832;

P.O.

Att.-Gen. v. Radloff, 10 Ex. 84; *R. v. Akers*, 6 Esp. 125; *Att.-Gen. v. Briant*, 15 M. & W. 169; *Van Boven*, 9 Q. B. 669.

Sect. 277.*As to the Isle of Man**Isle of Man.*

Isle of Man deemed part of United Kingdom for Customs purposes.

277. The Isle of Man shall be deemed and taken to be part of the United Kingdom for all the purposes of the Customs Acts; but nothing herein contained shall prejudice or affect, or be construed in any way, directly or indirectly, to prejudice or affect, any of the rights or privileges legally exercised or enjoyed by the said isle at the time of the passing of this Act.

Restriction on bringing foreign goods from Isle of Man to Great Britain or Ireland.

278.(d) No foreign goods upon which a higher duty is payable on their importation into Great Britain or Ireland than on their importation into the Isle of Man shall, after the same have been cleared and delivered out of charge of the proper officers of Customs for consumption or otherwise in the said isle, be carried or shipped or be water-borne, or be brought to any quay wharf or other place to be shipped or water-borne to be carried from the said isle into Great Britain or Ireland; nor shall any such goods which may be brought to the said isle, though not cleared and delivered as aforesaid, be removed or carried to be brought or taken from thence into Great Britain or Ireland until the same shall have been duly cleared for that purpose by the proper officer of Customs, nor (unless reported for removal in the same ship and in continuation of the voyage to some port in Great Britain or Ireland) until sufficient security by bond or otherwise shall have been given in such manner and on such terms and conditions as the Commissioners of Customs may direct for the due delivery thereof at some port or place in Great Britain or Ireland, and no British or Irish spirits shall be removed or exported from the Isle of Man to any port or place in Great Britain or Ireland; and all goods carried brought shipped removed, or water-borne to be shipped removed or carried contrary hereto shall be forfeited; and every person who shall carry ship bring remove, or water-bear to be shipped removed or carried any goods contrary hereto, or who shall aid or be concerned therein, shall forfeit treble the duty-paid value of such goods or the sum of one hundred pounds, at the election of the Commissioners of Customs.

Conditions of bringing goods the growth or manufacture of Isle of Man into Great Britain or Ireland.

279. Any goods the growth of the Isle of Man, or there manufactured from materials the growth of the said isle, or from materials not subject to duties in Great Britain or Ireland, or from materials upon which the duty has been paid in Great Britain or Ireland, and upon which no drawback has been subsequently granted, may be brought from the said isle into Great Britain or Ireland without payment of any duty: Provided always, that any goods may nevertheless be charged with such proportion of such duties as shall fairly countervail any duties of Excise payable on the like sort of goods the produce of that part of Great Britain or Ireland into which they shall be brought, or payable upon any of the materials from which such goods are manufactured; and any articles either wholly or in part manufactured in the said isle from any materials upon which a higher duty is payable upon their importation into Great Britain or Ireland than on their importation into the Isle of Man, may be brought from the said isle into Great Britain or Ireland on payment of the duty payable on such goods in that part of Great Britain or Ireland into which they shall be so brought.

Declaration and certificate of growth or manufacture of goods from Isle of Man.

280. Before any goods shall be shipped in the Isle of Man to be carried to Great Britain or Ireland, as the growth or produce of that isle, or as manufactures of that isle, from materials the growth and produce thereof, or from materials not subject to duty in Great Britain or Ireland, or from materials

(d) This section as printed is substituted for the original section by 42 & 43 Vict. c. 21, s. 14.

upon which the duties shall have been paid and not drawn back in Great Britain or Ireland, proof shall be made by the written declaration of some competent person, to the satisfaction of the collector or other proper officer of Customs at the port of shipment, that such goods (describing and identifying them) are of such growth produce or manufacture, as the case may be; and in such declaration shall be stated the name of the person by whom such goods are intended to be shipped; and such person at the time of shipping (not being more than one month after the date of such declaration) shall make and subscribe a declaration before such collector or other proper officer that the goods to be shipped are the same as mentioned in such declaration; and thereupon the collector or other proper officer shall, on demand, give to the master of the ship in which the goods are to be exported a certificate of such proof of produce or of manufacture, describing the same, and setting forth the name of the party and of the ship and of the master thereof, and the destination of the goods. (c)

Sect. 280.

281. Nothing herein contained shall be deemed or construed to affect the laws and regulations now in force respecting duties and drawbacks of Excise on goods removed to the Isle of Man. Act not to affect Excise drawback.

282. If any ship or boat bound from the Isle of Man to Great Britain or Ireland shall have on board any stores of spirits tobacco or tea for the use of the crew exceeding the quantities specified in the following table, such stores, together with the casks or packages containing the same, and also the ship or boat, shall be forfeited :— Stores of Manx ships.

TABLE.

—	In ships or decked vessels.	In open boats.
Spirits for each seaman .	Half a gallon . .	One quart.
Tobacco for each seaman .	One pound . .	Half a pound.
Tea for the whole crew :	Two pounds . .	One pound.

283. The Commissioners of the Treasury shall and may at any time, if they see fit, by order under their hands, restrict or limit the importation into the Isle of Man of any foreign goods to such quantities per annum and in such manner as they may deem necessary, and also determine into what ports in the Isle of Man and from what places such goods may be imported. Treasury may restrict imports.

MISCELLANEOUS MATTERS

Miscellaneous.

As to the Interpretation of Terms used in this Act

284. For the purposes of this or any other Act relating to the Customs and in construing the same, the following terms, when not inconsistent with the context or subject-matter, shall have the several meanings, and include the several matters and things herein-after prescribed and assigned to them; that is to say, Interpretation of terms.

“British possession” shall mean and include colony, plantation, island, territory, or settlement belonging to Her Majesty.

“Channel Islands” shall mean the Islands of Guernsey, Jersey, Alderney, and Sark, and their respective dependencies.

(c) As to explosives, see 52 & 53 Vict. c. 42, s. 4.

Sect. 284.

"County" shall mean and include any city, county of a city, county of a town, borough, or other magisterial jurisdiction where such construction is not inconsistent with the context.

"Customs Acts" shall mean and include this and all or any other Acts or Act relating to the Customs.

"Exporter of goods for which no bond is required" shall include and apply to the person subscribing the declaration required at the foot of the specification, Forms No. 8 and No. 9, (f) or manifest in lieu thereof, as the case may be.

"Drawback" shall include bounty.

"Gaoler" shall mean and include any governor or keeper of Her Majesty's prisons.

"Importer" shall mean, include, and apply to any owner or other person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the officers of Customs.

"Master" shall mean the person having or taking the charge or command of any ship.

"Official import lists and official export lists" shall mean any lists which are now or shall from time to time be issued under the authority of the Commissioners of the Treasury or Customs, prescribing the denominations, descriptions, and quantity by tale, weight, measure, value, or otherwise, by which articles of merchandise shall be required to be entered on their importation into or exportation from the United Kingdom.

"Proper officer of Inland Revenue" in the fourth section of the Act of the thirty-seventh and thirty-eighth years of Her Majesty's reign (g) shall mean "proper officer of Customs."

"Queen's warehouse" shall mean any place provided by the Crown or approved by the Commissioners of Customs for the deposit of goods for security thereof and of the duties due thereon.

"Warehouse" shall mean any place in which goods entered to be warehoused may be lodged, kept, and secured.

Cards imported not to be sold without a wrapper provided by the Commissioners of Inland Revenue.
16 & 17 Vict.
c. 107.

286. In construing section one hundred and fourteen of the Customs Consolidation Act, 1853, relating to cards, saved from repeal in Schedule (A.) to this Act annexed, it shall be read as if section twenty-eight of the Act of the twenty-fifth and twenty-sixth years of Her Majesty's reign, chapter twenty-two, were therein referred to and had been originally inserted therein instead of the Act therein mentioned, and the reference in the thirty-sixth section of the above-mentioned Act to the Customs Consolidation Act, 1853, hereby repealed, shall be deemed to apply to the several clauses of that Act relating to cards as saved in the said schedule and read as hereby directed. (h)

Customs officers may exercise Excise powers when necessary. (i)

Power to issue directions.

Wreck Receiver.—On a ship being stranded or in distress the receiver may take command of all persons present and issue directions for the preservation of the ship, persons on board and

(f) See s. 110.

(g) C. 46.

(h) All such cards imported or made in the United Kingdom, or offered exposed, or

kept for sale may be seized: 16 & 17 Vict. c. 107, ss. 114, 115.

(i) 7 & 8 Geo. IV. c. 53, s. 38. See 24 & 25 Vict. c. 91, s. 22.

cargo. (*j*) For these purposes he may summon assistance, require the master of a ship near to lend aid and demand the use of any wagon, cart, or horses near. (*k*)

He may cause persons plundering, creating obstruction or disorder to be apprehended, and force to be used for the suppression of such plundering, disorder or obstruction. (*l*)

In such cases the receiver and his assistants may, unless there is a public road equally convenient, enter and pass over adjoining lands and deposit cargo, etc., thereon. Any damage is recoverable as salvage. (*m*) And in the absence of the receiver, or principal officer of customs or coastguard, officers of inland revenue, sheriff, justice, or commissioned officers, may act in that capacity. (*n*)

Whenever any salvage is due under the Merchant Shipping Act, 1894, the receiver shall, if due for services rendered to save ship, persons or cargo, detain the ship and cargo until payment or process of detention issues from competent Court; if due for saving of wreck, detain wreck in like manner. But no security being given he may release the same. (*o*) If parties liable to pay are aware of it, he may, if amount not disputed and payment not made in twenty days after becoming due, sell the same or a sufficient part thereof, and out of the proceeds pay the expenses and salvage and the surplus, if any, to the owners. In other cases there must be a judgment of a competent tribunal before sale. (*p*)

A *detaining officer* is to have the same powers as an inspector of the Board of Trade. (*q*) For the purposes of survey, he may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, and tackle. (*r*)

And any officer of Customs or of the Board may seize and detain any ship liable to detention under the Foreign Enlistment Act, 1870. (*s*) These are :—

If the master or owner of any ship without the license of Her Majesty knowingly either takes on board or engages to take on board or has on board

(*j*) 57 & 58 Vict. c. 60, s. 511. He cannot interfere between master and crew unless requested by the master to do so.

(*k*) S. 512.

(*l*) S. 514.

(*m*) S. 513.

(*n*) S. 516.

(*o*) S. 552.

(*p*) S. 553. See *The Fulham*, 1899, P. 251.

(*q*) S. 459.

(*r*) As to foreign ships overloading, see s. 462.

(*s*) 33 & 34 Vict. c. 90, s. 21.

Sect. 7. such ship within Her Majesty's dominions any of the following persons in this Act referred to as illegally enlisted persons, i.e. to say—

(1) Any person who being a British subject within or without the dominions of Her Majesty has without the license of Her Majesty accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state.

(2) Any person being a British subject who without the license of Her Majesty is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state.

(3) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state. . . .

Detention of
ship and
persons.

Such ship shall be detained. . . .

All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship. (t)

If any person in Her Majesty's dominions without the license of Her Majesty—

(3) Equips any ship with intent or knowledge or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state; or—

(4) Dispatches or causes or allows to be dispatched any ship (u) with intent or knowledge or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state. . . .

Forfeiture.

The ship . . . and her equipment shall be forfeited. (w)

If any person within the limits of Her Majesty's dominions and without the license of Her Majesty—

Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state. . . .

(2) All ships and their equipments and all arms and munitions of war used in or forming part of such expedition shall be forfeited. (x)

Ship shall include any description of boat vessel floating battery or floating craft; also any description of boat vessel or other craft or battery made to move either on the surface of or under water or sometimes on the surface of and sometimes under water.

Ship and equipment shall include a ship and everything in or belonging to a ship.

Master shall include any person having the charge or command of a ship. (y)

King's harbour-
master.

The powers of the *King's harbour-master* may be here added. If the master of any vessel within a dockyard port does not moor, anchor, place, unmoor, or remove the same according to directions given by this officer in conformity with an Order in Council, or if there is no person on board to attend to such

(t) S. 7.

(u) Includes a steam tug: *The Gauntlet*,
L. R. 4 P. C. 184.

(w) S. 8. Not to apply to an existing
contract if on proclamation of neutrality

notice be given to the Secretary of State
and security if required.

(x) S. 11.

(y) S. 30.

directions, he may cause the vessel to be moored, etc., in conformity with such Order, and for that purpose may cast off, loose, or unshackle, and if need be sever any chain or rope of the vessel, first putting on board a sufficient number of persons for the protection of the vessel in case there is not a sufficient number thereon and all expenses attending the exercise of such powers shall be paid by the master. (z)

Directions as to mooring.

This officer or any person authorised in writing by the Admiralty may with proper assistance enter into any vessel in such port and there search for gunpowder, shotted or loaded guns, fire or light, or combustible substances had or suspected to be had on board in contravention of any Order in Council, and may extinguish any such fire or light. (a)

Entry and search.

He may remove any wreck or other thing being an obstruction to such port, or the approaches thereto, and any floating timber that impedes the navigation thereof. (b) And cause every vessel laid by or neglected or unfit for sea-service to be removed from a part of the port specified in an Order in Council and to be laid on some part of the strand or sea-shore or in some other place where the same may without injury to any person be placed. (c)

Remove obstructions.

He may, in case of non-payment on demand of the expenses of any such removal of wreck, timber, or vessel by the owner thereof, sell the same, and out of the proceeds pay those expenses and the expenses of the sale, rendering the surplus, if any, to the owner on demand. Any deficiency may be recovered from the owner. (d)

Sell to pay expenses.

Slave trade.—Customs, commissioned and consular officers may if a vessel is British or engaged in the slave trade in British jurisdiction, or if foreign under treaty, seize and detain such vessel and persons found thereon reasonably suspected (e) of detention as slaves and carry away such vessel, etc., for the purpose of bringing them in for adjudication. (f) These powers are extended to British vessels reasonably suspected of being or having been employed or fitted out for the commission of similar offences against Pacific Islanders, (g) and include all goods and effects found on board. (h) And other officers may here be required to assist and force may be used. (i) These

Slave trade.

Power to arrest persons and seize and detain vessels.

(z) 23 & 29 Vict. c. 125, s. 11.

(a) S. 12.

(b) S. 13.

(c) S. 14.

(d) S. 15.

(e) *R. v. Casaca*, 5 A. C. 548.

(f) 36 & 37 Vict. c. 88, s. 3.

(g) 35 & 36 Vict. c. 19, s. 1.

(h) 38 & 39 Vict. c. 51, s. 3.

(i) 35 & 36 Vict. c. 19, s. 17.

powers are not confined to acts done in England and the colonies. (k) But a seizure in harbour of a ship *bona fide* engaged in trade will require strict proof. A reasonable suspicion that the alleged slaves had been kidnapped with the object of carrying them as free labourers is not sufficient. (l) But if there was a slave adventure and the vessel was in any way engaged in it, it is otherwise. (m) The jurisdiction does not extend to the case of a foreigner not prohibited from carrying on the trade by the laws of his own country. (n)

Sea Fisheries. *Sea Fisheries.*—Certain customs officers are employed to put in force the Acts relating to sea fisheries and the North Sea convention. (o)

Powers of
officers.

In such case, in exercise of their powers, they may with respect to any sea fishing boat within the exclusive limits of the British Isles, and with respect to any British sea-fishing boat outside those limits—(1) board the boat; (2) require the owner, etc., to produce certificates; (3) number the crew; (4) require explanations as to certificates from master; (5) examine sails, lights, small boats, anchors, grapnels, and fishing implements; (6) seize any instrument serving only or intended to damage or destroy fishing implements by cutting or otherwise found on board or in possession of any person belonging to her; (7) hold an examination; (8) and in case of any contravention, take the offender and the boat and the crew to the nearest or most convenient port, and there detain them until adjudication. (p) The port to which any sea-fishing boat or any person belonging thereto is taken shall except where the nationality of such boat is not evidenced by official papers, be a port of the state to which such boat belongs. (q)

The offences are:—

Any person within the exclusive fishery limits (see s. 28) or any person belonging to a British sea-fishing boat outside such limits who—

(k) *R. v. Zulueta*, 1 C. & K. 215.

(l) *R. v. Casaca*, ubi sup. See *Casnova v. The Queen*, L. R. 1 P. C. 268; *Barton v. The Queen*, 2 Moo. P. C. 19.

(m) *R. v. Zulueta*, ubi sup.

(n) *Madrazo v. Willes*, 3 B. & Ald. 353. As to the effect of a foreign sovereign's proclamation, see *Carr v. Fracis*, 1902, A. C. 176.

(o) Close time for bream is March to June; sea-trout, September to January; oysters, May to July, and lamprey, March, inclusive.

(p) 46 & 47 Vict. c. 22, s. 12. See *Poll*

v. Ld. Advocate, 1 F. 823. The convention forms the 1st schedule to the Act. These powers are extended to liquor traffic, except that sub-sect. 8 *supra* is not to apply to other than sea-fishing boats or vessels habitually employed in dealing with fishermen unless necessary to suppress grave disorder: 56 & 57 Vict. c. 17, s. 6.

(q) 46 & 47 Vict. c. 22, s. 13. See also 31 & 32 Vict. c. 45, ss. 9, 26, and 54 & 55 Vict. c. 37, ss. 4, 5. As to the powers of local sea-fishery officers E. & W., see 51 & 52 Vict. c. 54, ss. 2, 6.

Violates Arts. 13 to 22 of the convention—which regulates the fisheries (r)

Or Art. 23—using or having on board any instrument or engine which serves only to cut or destroy nets. Such instruments are liable to forfeiture. (s)

Foreign sea-fishery boats unlawfully within exclusive fishery limits. (t)

Obstructing sea-fishery officers. (u)

Where seal-fishing in Behring Sea has been prohibited by Seal fishing. Order in Council, any full-pay naval officer may stop and examine any British ship in such sea and detain her, or any portion of her equipment, or any of her crew, if, in his judgment, the ship is being or is preparing to be used contrary to the Act. (x)

As to the Herring Fishery (Scotland), by the Act of 1815 Herring (S.) any superintendent of the herring fishery on any person acting under his orders or any fishery officer may seize (y)

Any herring net or any trawl net drag net or other sea net for the taking Power to seize of herrings which hath a mesh of less than one inch from knot to knot or any nets. false or double bottom eod or pouch or any net though of legal size which is put behind others to destroy the small fish. (z)

The Board are empowered to fix the measure by which fresh herrings are illegal bought and sold. (a) Any cran or measure which shall be of greater content or measnres. capacity used for ascertaining the quantity of such fish is forfeited. (b)

And any box basket or other measure not properly marked is liable to Not properly forfeiture and may be seized and destroyed or otherwise disposed of. (c) marked.

If any person shall ship or put on board any ship vessel or boat about to be Old barrels. employed in the said fisheries any old barrels or half barrels theretofore employed in the said fisheries which at the time of such shipment shall bear any official brand theretofore affixed thereupon under and in pursuance of the Herring Fishery Acts or shall pack any herrings or other fish in any such barrels all such barrels and the herrings or other fish shall be forfeited. (d)

All herrings or herring fry taken contrary to the provisions of the said Fish taken Acts (e) and every boat and net used in the taking of such herrings or herring illegally, and articles used.

(r) S. 4.

(s) S. 5.

(t) S. 7. Fish or fishing gear found in the boat or shown to have been taken or used by any person belonging to the boat within such limits are forfeited: 54 & 55 Vict. c. 37, s. 5.

(u) S. 14, and see 48 & 49 Vict. c. 70, s. 5 as to steam trawlers (S.) having letters and numbers painted. As to mussel-scalps see *Parker v. Ld. Advocate*, 6 F. 37.

(x) 58 & 59 Vict. c. 21, s. 5; see also 57 & 58 Vict. c. 2, s. 4.

(y) 55 Geo. III. c. 94, s. 10.

(z) 48 *ib.* c. 110, s. 12.

(a) 55 *ib.* c. 94, s. 13. See *Lowdon v. Ingram*, 11 R. 57.

(b) 1 & 2 Geo. IV. c. 79, s. 5.

(c) 52 & 53 Vict. c. 23, s. 4. As to barrels see 48 Geo. III. c. 110, s. 50; 14 & 15 Vict. c. 26, s. 3. And as to fee for branding, 21 & 22 Vict. c. 69, s. 1.

(d) 11 Geo. IV. c. 54, s. 2.

(e) By 28 & 29 Vict. c. 22, s. 2 it is not lawful to fish for herrings from 1 Feb. to 31 May between Ardnamurchan and the Mull of Galloway and in other districts when prohibited by regulations of the Board. Nets so used may be seized and shall be forfeited.

Sect. 4. fry and every boat box basket creel or other article in which the same may be found may be seized. (*f*)

The Board (*g*) may make regulations for preserving order and—

Boats.

Gear.

Every person who commits any breach or contravention of such regulations shall be liable to a penalty and the boat in or from which such person shall commit such breach or contravention and all sailing rowing or steering gear connected therewith may be seized and detained for a period not exceeding thirty days. And the herrings or herring fry in the possession of the person committing such breach or contravention and the nets floats buoys and other fishing implements or apparatus used by him may be seized . . . and forfeited. (*h*)

Fish to be sold or destroyed.

Where any herrings or herring fry shall have been seized as being liable to forfeiture under the said Acts or of any regulations made or to be made by the Board as therein provided they may be destroyed or sold as soon as may be by open sale . . . and if there shall be no forfeiture the proceeds after deducting expenses shall be paid over on demand to the person in whose possession the said herrings were when seized unless such person shall have absconded. (*i*)

Illegal nets.

Every net set or attempted to be set on any day between sunrise and one hour before sunset from the 1st June to the 1st October or between sunrise Saturday morning and one hour before sunset Monday evening on the west coast between Ardnamurehan Point and the Mull of Galloway shall be forfeited and may be seized and destroyed or otherwise disposed of. (*k*) Or used in beam trawling or otter trawling (*l*) within three miles of low water mark of any point of the coast of Scotland or within the waters specified in the schedule to this Act save only between such points on the coast or within such other defined areas as may from time to time be permitted by byelaws of the Board subject to any conditions or regulations made by such byelaws. Provided that this section is not to apply to the Solway Firth or the Pentland Firth. (*m*)

Where beam trawling otter trawling or seine trawling have been regulated by bye-law nets etc. used in contravention thereof. (*n*) If no conviction shall follow any net so seized shall be forthwith returned and due compensation made for any loss or damage occasioned thereto by such seizure. (*o*)

Enforcement of byelaws.

Fishery officers appointed for enforcing bye-laws may within the limits of the district or of any fishery district (*a.*) stop and search any vessel or vehicle used within the district in fishing or in conveying either fish or any substance the deposit or discharge of which is prohibited or regulated by such bye-laws and (*b.*) search and examine all instruments used in catching or carrying fish and (*c.*) seize any sea-fish or instrument liable

(*f*) 24 & 25 Vict. c. 72, s. 4.

(*g*) As to inspection of whaling factories see 7 Ed. VII. c. 41, s. 4.

(*h*) 30 & 31 Vict. c. 52, s. 2.

(*i*) S. 7.

(*k*) 52 & 53 Vict. c. 23, s. 5.

(*l*) Net in this section includes fishing gear and also otter-boards and the warp: *Rankin v. Wright*, 4 F. 5. Seizure beyond

the three-mile limit is illegal: *Pyper v. Ingram*, 3 S. L. T. 57. The section applies to foreigners: *Peters*, 7 F. 86.

(*m*) S. 6; 53 & 54 Vict. c. 10, s. 3.

(*n*) 52 & 53 Vict. c. 23, s. 7; 58 & 59 Vict. c. 42, ss. 9, 10: *Gordon*, 1903, S. C. 17.

(*o*) S. 10.

to be forfeited in pursuance of such bye-laws. And they are to have the same powers privileges and liabilities as constables. (*p*)

They may prevent the landing or selling of any fish caught in contravention of the Act of 1889 or any bye-law made thereunder. (*q*) Gear abandoned.

All nets buoys floats or other fishing implements or apparatus whatsoever abandoned and found by or delivered to them shall be held subject to the orders of the Board and unless the same are liable to forfeiture be restored to the owner or his representatives on evidence being produced of his or their right thereto within the space of a year. (*r*)

As to Sea Fisheries—Ireland—

Sea Fisheries
(*I.*)

It shall be lawful for such officers and petty officers belonging to the cruisers of Her Majesty's navy and for such officers and men of the coastguard stations as shall be thereunto authorised by the Commissioners of Customs at such times and in all such places and subject to such directions and regulations as the said Commissioners shall from time to time think fit to prescribe (*s*) to go on board any vessel employed in fishing and examine the certificate of registry and nets of such vessel and whether the regulations of the Fisheries (Ireland) Act, 1842, have been complied with and whether the master and other persons on board such vessel are carrying on the said fishery in the manner hereby required and to seize any illegal nets or engines or any nets or engines used contrary to the provisions of this Act or any of the orders regulations or bye-laws made by the [Board] for this Act; and it shall be lawful for the officers and men employed in the coastguard service in Ireland . . . to do all such . . . acts on sea or land in relation to the preservation of the peace among persons engaged in fishing and the enforcement of the provisions of this Act as any constable may lawfully do within his jurisdiction. (*t*) Power to board vessels.
Seize nets.

When any person shall be found at sea . . . offending against any of the provisions of this Act by the use of any illegal net engine or device whatsoever for the taking of fish or by the use of any net engine or device prohibited at the time or in any other manner it shall be lawful for any officer or person hereinbefore empowered to enforce the provisions of this Act . . . to require the person so found offending forthwith to desist from such offence and also to tell his Christian name surname and place of abode; and in case such person shall after being so required refuse to tell his real name or place of abode or shall give such a general description of his place of abode as shall be illusory for the purpose of discovery or shall wilfully continue such offence it shall be lawful for the officer or person so requiring as aforesaid and also for any person acting by his order and in his aid to apprehend such offender and to convey him or cause him to be conveyed as soon as conveniently may be before a justice of the peace. . . . Provided always that no person so apprehended shall on any pretence whatsoever be detained for a longer period than twenty-four hours from the time of his apprehension before he shall be brought before some justice of the peace and that if he cannot . . . then that person so Offenders at sea.
Arrest.

(*p*) S. 19.

(*q*) 52 & 53 Vict. c. 23, s. 8.

(*r*) 23 & 24 Vict. c. 92, s. 10. As to repacking of herrings see 14 & 15 Vict. c. 26, s. 4.

(*s*) As to inspection of whaling factories see 8 Ed. VII. c. 31, s. 4.

(*t*) 5 & 6 Vict. c. 106, s. 86. As to production before the magistrates of illegal nets and engines, see s. 103.

Sect. 87. apprehended shall be discharged but may nevertheless be proceeded against . . . by summons or warrant. (u) Illegal nets etc. are as follows :—

Illegal nets.

No net or other engine covered with canvas hide or other material by which unsizeable and young fish may be taken or destroyed shall be used on the sea coast or within any estuary except for the purpose of dredging for shell fish. (x)

No person shall at any time between sunrise and sunset set either in the sea or within the tide way in any estuary any sea-net for the catching of herrings or any trammel net or leave any drag or other net in the water between sunrise and sunset except stake or fixed nets for the catching of salmon as thereafter provided and save also seines or drift nets for pilehards or fish other than herrings provided such stake or fixed nets and such seines or drift nets be used at such times and places as may not be prohibited by the bye-laws thereinafter mentioned. (y) But all persons may use seine nets for the catching of herrings save and except in such places and at such times as shall or may . . . be forbidden by any bye-law rule or regulation to be . . . made by the [Board]. (z)

Coast defence.

Coast defence.—Persons authorised by the Secretary of State for War may enter on, survey and mark out any lands buildings or other hereditaments or easements wanted for the service of the department or for the defence of the realm. (a) Lands etc. cannot be taken (b) without consent except necessity be certified by the Treasury or an enemy has invaded the kingdom. (c) In default of agreement to purchase two justices may put these persons in possession. (d) The like powers may be exercised on behalf of the Admiralty. (e)

EXCISE

The inherent powers of excise officers are contained in a number of Acts dealing with Excise Management, Intoxicating Liquors, Tobacco and so forth. These are so far as material set out below in this order.

By 7 & 8 Geo. IV. c. 53 (the Excise Management Act, 1827)—

No entry shall be legal unless made in the name of the

20. (f) No entry of any building, place, vessel, or utensil, made by any person or persons under any Act or Acts of Parliament relating to the revenue of excise, shall be or be deemed or taken to be a legal entry thereof, unless the

(u) S. 87.

(x) S. 6.

(y) S. 7.

(z) 7 & 8 Vict. c. 108, s. 7.

(a) 5 & 6 Vict. c. 94, s. 16.

(b) As to compensation see *Blundell v. The King*, 1905, 1 K. B. 516, and 54 & 55 Vict. c. 54, s. 11.

(c) 5 & 6 Vict. c. 94, s. 23.

(d) S. 19. See *Harvey v. Harkin*, 1898, 2 L. R. 65; *R. v. Cork, JJ.*, 1900, 2 L. R. 105. As to temporary erections see s. 24 and as to erecting repairing or replacing alignment marks, 55 & 56 Vict. c. 43, s. 21. As to shooting ranges: 48 & 49 Vict. c. 36, s. 3; *Fergusson v. Pollock*, 3 F. 1140.

(e) 58 & 59 Vict. c. 35, s. 2. As to the power of the Crown to erect beacons light-houses and sea-marks and to enter on lands for that purpose, see 3 Inst. 204; 4 *ib.* 148, and 57 & 58 Vict. c. 60, s. 636.

(f) By s. 3 this Act and the several provisions thereof respectively shall be deemed and taken to apply to all Acts of Parliament relating to the revenue of excise which shall hereafter be made. By 9 Geo. IV. c. 44, s. 4, the Acts relating to the revenue of excise on tea, and to coffee, cocoa, pepper, tobacco, snuff, foreign and colonial spirits and wine are extended to the United Kingdom.

same shall have been made by and be in the name or names of a person or persons who shall at the time of making such entry have attained the age of twenty-one years, and who shall be the true and real owner or owners of the trade or business therein or thereby carried on, or in respect of which such entry of such building, place, vessel, or utensil shall have been made : Provided always, that the person or persons who shall act as the visible owner or owners of any trade or business in respect of which any such entry shall have been made, or by whom the same respectively shall be occupied or used, or who shall have the principal management thereof, shall in all respects, and notwithstanding the minority of such visible owner or owners, be subject and liable to all duties, penalties, and forfeitures imposed by this Act, or any other Act or Acts of Parliament relating to the revenue of excise, or any part thereof, to which the real owner or owners of such building, place, vessel, or utensil, or of such trade or business therein or thereby carried on, would have been liable ; and all stock in such trade or business, and all materials vessels, and utensils which shall then and there be found in or upon such building or place, to whomsoever the same shall then and there belong, shall be subject to and be charged with all such duties, penalties, and forfeitures. (g)

Sect. 20.

real owner, who must be of full age; but the ostensible owner shall be liable to duties, etc.

All stock, etc., on the premises shall be liable to duties, etc.

21. Every person making entry of any building, place, vessel, or utensil, under any Act or Acts of Parliament relating to the revenue of excise, shall in every such entry distinguish and describe every such building, place, vessel, or utensil by a particular letter or number, and shall, to the satisfaction of the supervisor or surveyor of the district or division, paint such respective letter or number in a large and distinct character upon some convenient and conspicuous part of the outside of the walls or doors of every such building and place, and upon some convenient and conspicuous part of the outside of every such vessel and utensil, and shall continue the same so painted, and from time to time and when occasion shall require, or when requested by the supervisor or surveyor of excise of the district or division, shall renew the same, so long as the entry thereof shall remain uncancelled, so that such letter or number so painted may be easily and distinctly observed and known by the officers of excise ; and wherever any such person shall use or employ, in any entered building or place, any fixed pipe, every such person, when required by the supervisor or surveyor of excise, by a written notice, shall paint and continue painted every such pipe, throughout its whole length and over its whole exterior surface, with a distinct oil colour or oil colours, to the satisfaction of the supervisor or surveyor of excise of the district or division ; and every such person, after such notice, shall also deliver, in addition to the entry required to be made by such person of any such building, place, vessel, or utensil, and as part thereof, a drawing or drawings, or description, distinctly showing or exhibiting and explaining the course, direction, construction, and use of every such pipe respectively, and of every branch thereof, and of every cock therein, together with every place, vessel, and utensil respectively, from and to or with which the same shall lead or communicate : Provided always, that all pipes or parts of pipes used for the same purpose only shall be painted of the same colour ; and if any such person shall use any building, place, vessel, or utensil, by him or her entered, which shall not be so distinguished and described as aforesaid, or which shall not have such letter or number so painted and continued thereon as aforesaid, or shall use any fixed pipe in any building or place so entered which shall not be so painted, and so

Entered premises, vessels, etc., to be distinguished by letters or numbers, and fixed pipes to be painted, under penalty of £100.

(g) By 11 & 12 Vict. c. 118, s. 3, informations for penalties are to be exhibited within six months. By 7 & 8 Vict. c. 25,

s. 3, premises and utensils used in making vinegar must be entered.

Sect. 21.

shown or exhibited and explained in any drawing or drawings, or description, or different from or disagreeing with any drawing or description by him or her delivered thereof, every such person using such building, place, vessel, utensil, or pipe as aforesaid shall for every such offence forfeit and lose, over and above all other penalties, the sum of one hundred pounds. (h)

Officer may enter any building or other place used for carrying on any trade subject to survey (if by night in the presence of a constable) for the purpose of inspecting the same, or taking any account, and charging the duty of excise.

Duties to be charged, and returns made to commissioners.

Return to be a charge of duty.

Specimen books may be left by the officers on the premises of traders for recording minutes of entries, accounts, etc.,

22. (i) It shall be lawful for any officer of excise and his assistants at any time, either by night or day, (but if between the hours of eleven at night and five in the morning, then upon request, and in the presence of a constable or other lawful peace officer, except in such cases as are otherwise specially provided for by any other Act or Acts of Parliament relating to the revenue of excise,) to enter into and remain so long as such officer may think fit, for the purposes herein-after mentioned, in any building or place belonging to or used by any person or persons for the purpose of carrying on any trade or business under or subject to any law or laws of excise, or belonging to or used by any person or persons making or required to make any entry of such building or place under any such law or laws; and it shall be lawful for such officer of excise and his assistants to inspect any such building or place, and to take such account as such officer shall deem necessary, according to the several laws, provisions, and regulations relating thereto, of all matters and things, and of all works, vessels, utensils, goods, and materials, belonging or in anywise appertaining to such trade or business; and it shall be lawful for such officer, and he is hereby authorized and required, to charge any duty or duties imposed by any Act or Acts of Parliament relating to the revenue of excise which shall be then chargeable upon the person or persons carrying on such trade or business, and of such account and charge of duty to make a return or report in writing to the commissioners of excise, (k) and to the commissioner or commissioners and assistant commissioners of excise in Scotland or Ireland, or to such person as the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in Scotland and Ireland respectively, may direct; such officer, in all cases where the minutes of the entries made by him in taking such account shall not appear on any such specimen left as herein-after mentioned, giving (if demand be made thereof in writing at the time of taking such account) a true copy of such charge, in writing under his hand, to the person or persons carrying on such trade or business; and every such return and report of such officer as aforesaid shall be and shall be taken to be a charge of such duty or duties upon such person or persons.

23. The supervisor or surveyor of excise in whose district or division any person or persons shall be who shall carry on any trade or business under or subject to any law or laws of excise, or the officer of excise under whose survey such person or persons shall be, may leave and deposit, in some conspicuous and open part of some building or place entered by such person or persons for such trade or business, a certain book or paper called a specimen, for recording therein minutes of the entries made by the officers respectively who survey the premises of such person or persons, or the trade or business of such

(h) If any person exercising or carrying on a trade or business under or subject to any law of excise, and registered to keep scales or weights or measures (a.) in the weighing of his stock or any goods uses, or suffers to be used any false unjust or insufficient scales or weight or measure with intent to defraud Her Majesty of any duty of excise or (b.) before or after the weighing of his stock or any goods puts

or suffers to be put any other substance thereto, whereby any officer of inland revenue may be hindered or prevented from taking a just and true account . . . the false unjust or insufficient scales and weights and measures shall be forfeited: 52 & 53 Vict. c. 42, s. 29.

(i) See *Hill v. Barnes*, 2 W. Bla. 1135.

(k) Now commissioners of customs and excise.

person or persons, in the books of such officers, of the state of the manufactory, and of the accounts and particulars of the survey thereof at any time taken by such officers respectively, and the names and minutes of survey and observations of any other officer who may visit or inspect such entered premises; and every officer of excise shall at all times have free access to such book or paper, with liberty and power to remove or take away the same, leaving a new book or paper for the like purpose as aforesaid in lieu thereof; and if any person, not being an officer of excise, shall remove or take away, or shall conceal or withhold, any such book or paper, or shall damage or destroy the same, or alter, deface, or obliterate any entry therein, or shall make any entry therein, every such person so offending shall for every such offence forfeit and lose the sum of two hundred pounds.

Sect. 23.

which shall not be removed or destroyed, under penalty of £200.

32. (l) In case any goods or commodities for or in respect whereof any duty of excise is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities, shall be removed, or shall be deposited or concealed in any place, with any intent to defraud his Majesty of such duty, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels respectively, shall be forfeited. (m)

Goods, etc., fraudulently removed or deposited to evade the duty shall be forfeited.

33. When any officer of excise shall at any time find in any private or unentered place manufacturing, or in the course of manufacturing, any goods or commodities for or in respect whereof any duty of excise is or shall be imposed, or any materials or preparations for manufacturing any such goods or commodities, and shall at the same time discover in or about such private or unentered place any person knowingly aiding, assisting, or in anywise concerned in the manufacturing of such goods or commodities, . . . it shall be lawful for any officer of excise, and all persons acting in his aid and assistance, to arrest and detain every person so discovered, (n) and to convey him or her before one or more justice or justices of the peace for the county, shire, division, city, town, or place wherein such person shall be so discovered as aforesaid. (o)

Persons found in unentered places employed in manufacture, etc., of goods liable to duty shall forfeit £30.

(f) All goods which shall be removed or deposited or concealed or which shall be produced to any officer of excise or customs with intent fraudulently to obtain any drawback or allowance granted by any act or acts relating to the revenues of excise or customs shall, with the casks, vessels, cases, or other packages containing the same be forfeited: 4 & 5 Will. IV. c. 51, s. 12.

(m) By sec. 61 summary proceedings may be taken by officers without the order of the commissioners of excise or customs. See also 4 & 5 Will. IV. c. 51, s. 28. The onus of proof is on the defendant: *Att.-Gen. v. Siddon*, 1 C. & J. 220; *Att.-Gen. v. Brewster*, 2 Anst. 560.

(n) See *Evans v. McCloughan*, 4 Macq. H. L. C. 89.

(o) By 4 & 5 Vict. c. 20, s. 5 (the Excise Management Act, 1841): All stills backs vats coppers presses machines and vessels and utensils of which entry is by any law or laws of excise required to be made and which shall not be duly and lawfully entered and all goods and commodities found in any such unentered still etc. or in any house warehouse

storehouse room, or place registered to be entered and not duly and lawfully entered shall be forfeited. S. 24: All goods and commodities for or in respect of which any duty of excise is or shall be by law imposed and all materials and preparations from which any such goods are made and all stills backs vats coppers presses cisterns tables machines and machinery vessels utensils implements and articles for making or manufacturing or producing any such goods and commodities or preparing any materials or by which the trade or business in respect of which the duty is or shall be imposed shall have been or shall be carried on in the custody or possession of the person carrying on such trade or business or in the custody or possession of any factor agent or other person in trust for or for the use of the person carrying on such trade or business shall be and remain subject and liable to and the same are hereby made chargeable with all the duties of excise which during the time of any such custody or possession shall be, or shall have been charged or become chargeable on or be in arrear or owing from

Goods, utensils, machinery.

Sect. 35.

Justices, constables, etc., required to assist revenue officers.

35. All justices of the peace, mayors, bailiffs, constables, and all his Majesty's officers, ministers, and subjects, serving under his Majesty, by commission, warrant, or otherwise, shall be aiding and assisting, and they are hereby respectively required to be aiding and assisting, to every officer of excise in the due execution of any act or thing required and enjoined by this Act, or by any other Act or Acts of Parliament relating to the revenue of excise, to be done; and all such persons who shall be so aiding and assisting unto any such officer of excise as aforesaid are and shall be defended and saved harmless by virtue of this Act.

Constables may continue assistance into districts beyond their jurisdiction.

37. It shall be lawful for every constable, headborough, or other ministerial officer of the peace, who shall have begun to assist any officer or officers of excise in the execution of his or their duty in any place where such constable, headborough, or ministerial officer of the peace shall have jurisdiction by law, and such constable, headborough, and ministerial officer of the peace is hereby respectively authorised and required, to continue such his assistance in to and in any other place, and shall be deemed a constable, headborough, or ministerial officer of the peace, and have jurisdiction accordingly, in such last-mentioned place, for the purpose of continuing such assistance.

Officers of customs to have powers of excise officer as to seizures, etc., under Excise Acts, and *vice versa*.

38. Every officer of the customs shall have, use, and exercise all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, or any British spirits forfeited under this Act, or any other Act or Acts of Parliament relating to the revenue of excise, as are, shall be granted, or shall or may be used or exercised in that behalf by any officer of excise; and every officer of excise shall have, use, and exercise all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, forfeited under any Act or Acts of Parliament

or by the person carrying on such trade or business; and shall also be and remain subject and liable to all penalties and forfeitures which during any such custody or possession shall be or shall have been incurred by the person carrying on such trade or business for any offence by such person committed against any act or acts relating to the revenue of excise; and all such goods materials and preparations stills etc. shall be and remain subject and liable to all such duties penalties and forfeitures by whomsoever and by whatsoever title or conveyance the same may be claimed; and it shall be lawful to levy thereon such duties penalties and forfeitures, and for that purpose to seize take sell remove and dispose of the same as the goods and chattels of debtors or offenders under a writ or writs of extent execution or other process or warrant for the recovery or enforcement of any such duties penalties and forfeitures; provided always that where any goods or commodities subject to any duty of excise shall have been taken account of and duly charged with duty by the proper

Power to seize and sell.

Proviso.

officer of excise and shall after having been so taken account of and charged with duty be fairly and *bonâ fide* and in the regular and ordinary course of trade sold disposed of and delivered into the possession of the purchaser thereof for a full and valuable consideration before the *teste* or issue of any process or warrant for the recovery of any duty or penalty such goods and commodities in the possession of such fair and *bonâ fide* purchaser shall be discharged from such liability as aforesaid; but in all cases where any goods or commodities shall be seized in the custody or possession of any person and shall be claimed to be discharged from any such liability as having been fairly and in the regular and ordinary course of trade purchased proof of the fairness and *bonâ fides* of the purchase and of the same having been in the regular and ordinary course of trade and of the sale and of delivery having been made before the *teste* or issue of the process or warrant under which such goods or commodities shall be seized shall lie on the claimer thereof.

relating to the revenue of the customs, as are or shall be granted or shall or may be used or exercised in that behalf by any officer of the customs; anything in this Act or in any other Act or Acts of Parliament to the contrary thereof notwithstanding. (p)

Sect. 38.

40. If any person armed with any offensive weapon whatsoever (q) shall with force or violence assault or resist any officer of excise, or any person employed in the revenue of excise, or any person acting in the aid or assistance of such officer or person so employed, who in the execution of his office or duty shall search for, take, or seize, or shall endeavour or offer to search for, take, or seize, any goods or commodities forfeited under or by virtue of this Act, or any other Act or Acts of Parliament relating to the revenue of excise or customs, or who shall search for, take, or seize, or shall endeavour or offer to search for, take, or seize, any vessel, boat, cart, carriage, or other conveyance, or any horse, cattle, or other thing used in the removal of any such goods or commodities, or who shall arrest or endeavour or offer to arrest any person carrying, removing, or concealing the same, or employed or concerned therein, and liable to such arrest, then and in every such case it shall be lawful for every such officer and person so employed, and person acting in such aid and assistance as aforesaid, who shall be so assaulted or resisted, to oppose force to force, and by the same means and methods by which he is so assaulted or resisted, or by any other means or methods, to oppose such force and violence, and to execute his office or duty; . . .

Officers, etc., violently resisted in making any seizure, may oppose force to force.

64. All goods commodities and chattels whatsoever forfeited under or by virtue of this Act or any other Act or Acts of Parliament relating to the revenue of excise shall and may be seized by any officer or officers of excise or person or persons employed in the revenue of excise or person or persons acting in the aid and assistance of any such officer or person so employed as aforesaid.

Goods forfeited may be seized.

107. All officers of the customs who shall make any seizure under or by virtue of this Act, or any other Act or Acts of Parliament relating to the

Officers of customs to give

Notice of shipping.

(p) By 57 Geo. III. c. 87, s. 11 (the Excise Drawback Act, 1817): In every case where a notice of shipping any goods wares or merchandise for exportation on drawback shall be given it shall be lawful for any officer of excise to open any or all package or packages mentioned or described in such notice and unpack and examine the contents thereof, and the exporter or exporters thereof shall on request of such officer or officers repack such goods (unless he she or they shall choose to receive back such goods unpacked) in the presence of a proper officer or officers of excise in order that the same may be secured and sealed as by law is required for goods packed for exportation on drawback he she or they being afterwards allowed and paid by the commissioners of excise reasonable expenses of such repacking and shall either forthwith ship the same under the before-mentioned notice or give a fresh notice for that purpose as the occasion may require and as required by law. S. 12: If upon notice being given for shipping any goods wares or merchandise for exportation on drawback any other goods or packages

than such as are mentioned or described in such notice shall be shipped as and for such goods or packages mentioned or described in such notice or if any packages or goods mentioned or described in such notice shall after the shipment thereof be returned into or relanded in Great Britain (shipwreck and other inevitable accident excepted) without payment of the duty or duties imposed upon the importation of goods of the like kind, all such goods with the packages containing the same and the ship boat or vessel from which the same shall be unshipped shall be forfeited and shall and may be seized by any officer or officers of excise. See 6 Geo. IV. c. 105: *R. v. Dixon*, 11 Price, 204; *Att.-Gen. v. Towns*, 6 B. 198.

(q) A hatchet caught up accidentally: *R. v. Rose*, 1 Leach, C. C. 342; or a horse-whip or a stick: *R. v. Fletcher*, ib. 23; or a smuggler's pole: *R. v. Noakes*, 5 C. & P. 326, is not an offensive weapon within the section; but anything not in common use for any other purpose than a weapon is: *R. v. Cosans*, 1 Leach, C. C. 342.

Other goods or packages forfeited.

Sect. 107.

notice of the seizure of excisable goods.

Such goods, if removed without permit, where permit is required, shall be forfeited.

Seizures of excisable commodities by police or peace officers to be lodged in the chief or other office of excise.

Excisable goods stopped on suspicion of having been feloniously stolen or received, to be lodged in the police office.

After the trial for feloniously stealing, etc., the goods to be immediately deposited in the excise office, to be dealt with according to law.

revenue of excise, of any excisable goods or commodities, shall forthwith give notice of such seizure at the next office of excise, or to the supervisor or other officer of excise of the district where such seizure shall have been made; and such supervisor or other officer of excise shall, on such notice, take a particular account of the species and quantities of all such goods and commodities so seized respectively; and the same or any part thereof shall not afterwards be removed without a permit (where a permit is, for the removal of goods or commodities of a similar quantity, sort, or kind, required under any Act or Acts of Parliament relating to the revenue of excise), signed by the proper officer of excise of the place or district from whence the same shall be intended to be removed, on pain of forfeiture thereof for such removal. (r)

108. All goods or commodities whatsoever which are or shall be prohibited, or which are or shall be subject to any duty or duties of excise, and which shall be stopped, detained, or taken by any police officer or peace officer, or any other person, under or by virtue of any Act or Acts of Parliament, or under or by virtue of any other authority whatsoever, shall be conveyed, and the same is and are hereby directed and required to be forthwith conveyed, to and deposited and lodged in the chief office of excise, if the same shall have been stopped, detained, or taken within the limits of the chief office, or in the nearest office of excise if in any other part of the United Kingdom, . . .

109. Provided always, that in case any such goods or commodities as aforesaid shall be stopped, detained, or taken by any police officer or peace officer, or any other person, on suspicion of the same having been feloniously stolen or taken or received, it shall be lawful to and for such police officer or peace officer, or other person so stopping, detaining, or taking the same, to convey to, deposit, and lodge forthwith all such goods and commodities as aforesaid in the office of the police office nearest to the place where the same shall have been so stopped, detained, or taken as aforesaid, or any other convenient place directed by the justice or justices of the peace before whom the same shall be carried, there to remain in order to be produced at the trial of any person or persons who shall be charged with feloniously stealing, taking, or receiving the same; . . .

110. When and so soon as any person or persons charged with feloniously stealing, taking, or receiving any such goods or commodities as aforesaid shall have been tried for such offence, all such goods and commodities respectively as aforesaid shall immediately be conveyed to and deposited in the chief office of excise, or other office of excise as aforesaid, in order that prosecution or proceedings may be had for the condemnation of such goods or commodities for such cause or causes of forfeiture as the same shall be liable to, or that the same may be restored upon payment of such duty or duties as may be due in respect thereof, or upon such conditions as the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in Scotland

(r) By 2 & 3 Will. IV. c. 16, s. 11: All commodities for the removal whereof a permit is required which shall be or shall have been delivered removed or sent out or which shall be found removing, carrying or conveying or which shall be received without a proper permit accompanying the same shall be forfeited and may be seized by any officer of excise. As to the expiration of a permit, see *Cooke v. Sholl*, 5 T. R. 255. If the amount be exceeded all is liable to forfeiture:

Hall v. Dracon, 2 W. Bl. 1289. A permit obtained by a distiller's clerk for a cask of spirits sold to a person not licensed to sell spirits held illegal: *Lord Advocate v. Grants*, 25 Jur. 514; but a permit granted for removal of spirits to a public-house in the name of the licensee held valid although the business had been sold and the spirits were in fact ordered by the purchaser to whom the license had been transferred: *Nicholson v. Hood*, 9 M. & W. 365.

and Ireland respectively, shall think fit, to such person or persons as shall be proved to be the legal proprietor or proprietors thereof respectively, or for the purpose of being otherwise dealt with according to law. Sect. 110.

111. In case any such goods or commodities which shall be so stopped, detained, or taken shall not be conveyed to and deposited in the chief office of excise or other office of excise, in the manner by this Act directed, all such goods or commodities which shall not be so conveyed to and actually deposited in the chief office of excise or other office of excise as aforesaid shall be forfeited; . . . Goods not deposited shall be forfeited.

51 & 52 Vict. c. 8 (The Customs and Inland Revenue Act, 1888)

5. (1.) Power to treasury to prohibit by notice the use of certain substances in exciseable goods. Substances prohibited.

(2.) If after the publication of any such notice of prohibition in the *London Gazette*, any person shall use the substances or liquor thereby prohibited in the manufacture or preparation for sale of any article therein specified, he shall incur a fine of £50 and any such substance or liquor found in the possession of any person licensed for the manufacture or for sale of the article and also the article in the manufacture or preparation whereof any such substance or liquor may have been used shall be forfeited.

6. Any officer of Inland Revenue may at any time take samples of any goods or commodities chargeable with any duty of excise or customs provided that if the samples are taken after duty has been charged and paid on the goods or commodities, he shall pay for the same if demanded at the current wholesale price of the goods or commodities. Payment for samples.

53 & 54 Vict. c. 21 (The Inland Revenue Regulation Act, 1890)

30. (1.) All goods forfeited by virtue of any Act relating to Inland Revenue may be seized by any officer or by any person employed in relation to inland revenue or acting in the aid and assistance of any such officer or person. (s) Goods forfeited may be seized.

(2.) Where any goods are forfeited under any such Act every cask vessel case or other package containing or having contained the same and every ship boat cart or other conveyance and all horses or cattle and all things used in the removal or for the deposit or concealment thereof shall be forfeited. (t)

1 Ed. VII. c. 7 (The Finance Act, 1901)

8. [The Commissioners may make regulations as to saccharin, etc.] Saccharin.

If any person imports or makes any such saccharin or delivers or uses molasses without complying with these regulations or sells exposes for sale or offers or keeps for sale any such saccharin in respect of which these regulations

(s) This power must be exercised strictly: *Warne v. Varley*, 6 T. R. 443; *Grindley v. Barker*, 1 B. & P. 229. See *Att.-Gen. v. Lockwood*, 9 M. & W. 378; *Att.-Gen. v. King*, 5 Price, 195; *Mitchell*

v. Meek, 6 Pat. App. 420.

(t) If forfeited goods are inseparably mixed with others not forfeited the whole is forfeited: *R. v. Mawby*, Loft, 179, see *Colvill v. Reeves*, 2 Camp. 576.

Sect. 8. have not been complied with the saccharin or molasses as the case may be shall be forfeited.

Glucose.

9. [Regulations as to excise duty on glueose, etc.]

If any person acts in contravention of or fails to comply with any of these regulations the article in respect of which the offence is committed shall be forfeited. (u)

As to intoxicating liquors the principal Act is the Spirits Act, 1880, which follows:—

43 & 44 Vict. c. 24 (The Spirits Act, 1880)

Definitions.

3. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent with such meaning,—

“Spirits” means spirits of any description, and includes all liquors mixed with spirits, and all mixtures, compounds, or preparations made with spirits: (w)

“Low wines” means spirits of the first extraction conveyed into a low wines receiver:

“Feints” means spirits conveyed into a feints receiver:

“British spirits” means spirits liable to a duty of Excise:

“Plain spirits” means any British spirits (except low wines and feints), which have not had any flavour communicated thereto or ingredient or material mixed therewith:

“Spirits of wine” means rectified spirits of the strength of not less than forty-three degrees above proof:

“British compounds” means spirits redistilled or which have had any flavour communicated thereto, or ingredient or material mixed therewith:

“Foreign spirits” means all spirits and strong waters liable to a duty of Customs:

“Sugar” includes any saccharine substance or syrup manufactured from any material from which sugar can be manufactured: .

“Commissioners” means the Commissioners of Inland Revenue: (x)

“Methylate” means to mix spirits with some substance in such manner as to render the mixture unfit for use as a beverage, and “methylated spirits” means spirits so mixed with any substance or combination of substances approved for the purposes of methylation by (y) the Commissioners:

“Proof” means the strength of proof as ascertained by Sykes’s hydrometer:

“Still” includes any part of a still, and any distilling apparatus whatever for distilling or making spirits:

“Distiller,” “rectifier,” “dealer,” and “retailer” means respectively a person who distils, rectifies, or compounds, deals in, or retails spirits:

“Excise trader” means any person carrying on a business subject to any of the regulations of this Act, and includes a maltster who makes malt

(u) Extended to saccharin by 3 Ed. VII. c. 46, s. 2. See *McNicol v. Pinch*, 1906, 2 K. B. 352.

(w) See *Att.-Gen. v. Bailey*, 1 Ex. 281; *Bailey v. Harris*, 12 Q. B. 905; *Att.-Gen.*

v. Green, 4 Price, 224; *Att.-Gen. v. Houlgrave*, 11 ib. 217.

(x) See note (k), ante, p. 142.

(y) 53 & 54 Vict. c. 8, s. 32.

duty free for distillation and any proprietor or occupier of any excise warehouse:

- “Licence” means a licence granted by the Commissioners or by an officer duly authorized by them; and “licensed,” as applied to an Excise trader, means a person holding a licence so granted for the purpose of his business:
- “Premises,” when used with reference to an Excise trader, means any building or place used by him in the course of his business, and of which entry is required to be made:
- “Preserihed” and “approved” mean respectively preserihed or approved by the Commissioners:
- “Warehouse” means any warehouse approved or provided for the deposit of spirits:
- “Distiller’s warehouse” means an approved warehouse on the premises of a distiller:
- “Excise warehouse” means a warehouse approved or provided by the Commissioners as a general warehouse for the deposit of spirits:
- “Customs warehouse” means a warehouse approved or provided by the Commissioners of Customs for the deposit of spirits:
- “Collector” means the collector of Inland Revenue, and in connexion with the business of an Excise trader means the collector for the collection in which the premises of the trader are situate, and includes a person acting as such collector:
- “Officer” means officer of Inland Revenue:
- “Proper officer” means the officer of the division or ride in which the business of an Excise trader is carried on, or in which anything is by this Act required to be done by, or any notice to be given to, such officer, and includes a person acting as such officer, and also any officer superior in matters of Excise to such officer:
- “Writing” includes print, and “written” includes printed.
- 4. This Act is divided into Parts, as follows:—
 - Part I.—Spirits other than Methylated Spirits.
 - Part II.—Methylated Spirits.
 - Part III.—Supplemental.

Division into
Parts.

PART I

SPIRITS OTHER THAN METHYLATED SPIRITS

General

- 5. (1.) No person may, without being licensed to do so, or on any premises to which his licence does not extend—
 - (a.) Have or use a still for distilling, reetifying, or compounding spirits; or
 - (b.) Brew or make wort or wash, or distil low wines, feints, or spirits; or
 - (c.) Rectify or compound spirits.
- (2.) If any person contravenes this section he shall for each offence incur a fine of five hundred pounds, and all spirits, and vessels, utensils, and materials for distilling or preparing spirits in his possession shall be forfeited. (z)

Prohibition of
distilling, etc.,
without
licence.

(z) By 7 & 8 Vict. c. 25, s. 4, stills used in the manufacture of vinegar are subject to the regulations of the Commissioners.

Sect. 6.

Liabilities of person having wash and a still.

As to capacity, etc., of still in England.

Condition for grant of licence for still of less than 400 gallons.

Distillery to be within quarter of a mile of market town except on terms as to lodgings for officers.

Distillery not to be within quarter of a mile of rectifier's premises.

Premises of distiller not to be connected with premises of brewer, etc.

6. Every person who makes or keeps wash prepared or fit for distillation, or low wines or feints, and has in his possession or use a still, shall, as respects the duties, penalties, and forfeitures imposed by law on distillers, be deemed to be a distiller.

7. (1.) In England if a distiller keeps or uses a still of which the body, without the head, is of less capacity than three thousand gallons he must not keep or use in his distillery at the same time more than two wash stills and two low wine stills.

(2.) For every still kept or used in contravention of this section the distiller shall incur a fine of one hundred pounds, and a further fine of one hundred pounds for every time that any such still is used; and every still kept or used in contravention of this section shall be forfeited.

8. (1.) A person shall not have a licence to keep a still of less capacity than four hundred gallons, unless he has in use a still of that capacity, or produces to the Commissioners a certificate, signed by three justices for the county or place, that he is a person of good character, and fit and proper to be licensed to keep such a still, and that the premises in which he proposes to erect the still and of which he is in actual possession, are of the yearly value of ten pounds at least.

(2.) If the still is intended to be kept by persons in partnership, a certificate to the above effect with regard to one of the partners shall be sufficient.

(3.) The Commissioners may, if they think fit, refuse to grant the licence, notwithstanding the production of the justices certificate; but, in case of refusal, they shall state the grounds thereof, in writing signed by them, to the justices.

Distiller's Premises

9. (1.) A person shall not be entitled to a licence for, or be permitted to make entry of, a distillery, unless it is situate in or within a quarter of a mile of a market town.

(2.) The Commissioners may, if they think fit, grant a licence for, and permit entry to be made of, a distillery situate beyond these limits, on the terms of the distiller providing to their satisfaction lodgings for the officers to be placed in charge of the distillery.

(3.) The lodgings must be conveniently situate and must not form part of the distillery or of the distiller's dwelling-house, and the rent charged for them, unfurnished, must not exceed fifteen pounds a year. (a)

(4.) If a distiller to whom a licence is granted on these terms fails to provide the lodgings, or to keep them in repair, or interrupts or annoys any officer residing therein in his use or enjoyment thereof, the Commissioners may suspend or revoke his licence.

10. (1.) No person may make entry of or use for browning or making wort, or wash, or for distilling spirits, or for receiving or keeping spirits as a distiller, any premises within a quarter of a mile of any premises entered or used for rectifying or compounding spirits, or for receiving or keeping spirits by a rectifier.

(2.) If any person contravenes this section he shall incur a fine of five hundred pounds for every week during which the premises are so entered or used.

11. (1.) A distiller may not carry on upon his premises the business of a brewer of beer, or a maker of sweets, vinegar, cider, or perry, of a refiner of sugar, or of a dealer in or retailer of wine.

(2.) No person may carry on the business of a distiller upon premises

(a) See 45 & 46 Vict. c. 72, s. 5.

communicating otherwise than by an open public street or carriage road with any premises used by a brewer of beer, or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of spirits or a dealer in or retailer of wine.

Sect. 11.

(3.) If any person contravenes any of the foregoing provisions of this section he shall incur a fine of two hundred pounds.

(4.) The Commissioners may refuse to grant a licence for distilling spirits in any premises in which, from their situation with respect to premises used for rectifying or compounding spirits, or to a brewery or vinegar manufactory, they think it inexpedient to allow the distilling of spirits.

12. The Commissioners may refuse to grant a licence to brew beer, or to make vinegar, on any premises in which, from their situation with respect to a distillery, they think it inexpedient to allow the brewing of beer or making of vinegar to be carried on.

Power to refuse licence to brewer, etc.

Distiller's Spirit Store and Utensils

13. (1.) Every distiller must, to the satisfaction of the Commissioners, provide a spirit store and cause it to be properly secured.

Provision and securing of spirit store.

(2.) The spirit store must be kept locked by the officer in charge of the distillery at all times except when he is in attendance.

(3.) If a distiller fails to provide or secure a spirit store as by this section required, the Commissioners may, until it is so provided and secured, refuse to grant him a licence, or suspend or revoke his licence.

14. (1.) Every distiller must observe the rules contained in the First Schedule.

rules with respect to vessels, etc., in distillery.

(2.) For any contravention of the rules in the First Schedule penalties shall be incurred as follows :

- (a.) If there is found in a distillery any vessel in excess of the number permitted by the rules in the second part of the First Schedule, the vessel, with its contents, shall be forfeited, and the distiller shall incur a fine of two hundred pounds.
- (b.) For any contravention of the rules contained in the third part of the First Schedule the distiller shall incur a fine of two hundred pounds, and an additional fine of twenty pounds for every day during which the contravention continues.
- (c.) For any contravention of the rules contained in the fourth, seventh, or eighth part of the First Schedule the distiller shall incur a fine of two hundred pounds.
- (d.) For any contravention of the rules contained in the fifth, sixth, or tenth part of the First Schedule, the distiller shall incur a fine of fifty pounds.
- (e.) Every cask not marked as required by the rules contained in the ninth part of the First Schedule shall, with its contents, be forfeited.
- (f.) For any contravention of the rules contained in the eleventh part of the First Schedule, the wash, low wines, feints, or spirits in respect of which the rules are contravened shall be forfeited, and the distiller shall incur a fine of two hundred pounds, or, at the election of the Commissioners, of twenty shillings for every gallon of such wash, low wines, feints, or spirits.

15. (1.) A distiller may, on giving to the proper officer two days previous notice in writing of his intention, specifying the vessel, utensil, or pipe intended

Alterations of vessels, utensils, and pipes.

Sect. 15. to be altered, moved, or added, alter or move any entered vessel, utensil, or pipe, or add a new vessel, utensil, or pipe.

(2.) Every such new vessel, utensil, or pipe must be duly entered.

(3.) If a distiller, without giving such notice, alters, moves, or adds to the vessels, utensils, or pipes on his premises after entry has been made thereof, or the capacity thereof has been ascertained by the proper officer, he shall for each offence incur a fine of two hundred pounds.

Power of Commissioners to allow use of additional or substituted vessels, etc.

16. The Commissioners may permit any distiller to fix and use, subject to such regulations as they prescribe, any vessel, utensil, or fitting, in addition to or instead of any of those required by this Act, and may from time to time withdraw any such permission. This Act shall apply to any such additional or substituted vessel, or fitting as if its use were permitted or required by this Act.

Penalty for interference with or attempt to defeat gauging.

17. If on the premises of any distiller any attempt is made or device used to prevent or hinder an officer from ascertaining the gravity, quantity, or strength of the wort, wash, low wines, feints, or spirits in any vessel, or whilst running, or to deceive him in taking the dip or gauge of any vessel or utensil, the distiller shall for each offence incur a fine of two hundred pounds.

Penalty for frauds and offences in relation to fittings.

18. If a distiller—

(a.) Places, affixes, or makes any cock, plug, pipe, or opening in, on, to, into, or from any vessel or utensil in contravention of this Act; or

(b.) Causes or procures any cover, fastening, cock, plug, pump, or pipe to be so made or used that any vessel or utensil may be employed, opened, removed, filled, or emptied in the absence of an officer, or as in any manner to avoid or defeat the security intended to be provided by this Act,

he shall for each offence incur a fine of five hundred pounds.

Distiller's Entry

Time and mode of making entry.

19. (1.) Every distiller must, before he begins to brew any wort, make entry of the vessels, utensils, fittings, and places intended to be used by him, by signing and sending or delivering to the proper officer an account in the prescribed form, setting forth with the prescribed particulars—

(a.) His name and abode, and the situation of the premises intended to be entered; and

(b.) A true and particular description of every vessel and utensil intended to be used on those premises for the purpose of his business; and

(c.) Either—

(i.) The number of gallons which every still, with its head, is capable of containing; or

(ii.) The number of gallons of wash per hour which every still is capable of distilling; and

(d.) The purpose for which each such vessel and utensil is intended to be used; and

(e.) Every house, room, and place in which any part of his business is to be carried on, or any spirits are to be kept; and

(f.) The purpose for which each such house, room, or place is to be used.

(2.) In the account every vessel, utensil, house, room, and place must be distinguished by the name and number painted thereon.

(3.) No vessel, utensil, house, room, or place must be described in the account as intended to be used for more than one purpose.

(4.) There must be delivered with the account a drawing, model, or description distinctly showing the course, construction, and use of all fixed pipes to be used, and of every branch thereof and cock thereon, and every place, vessel, or utensil with which any such pipe communicates.

(5.) If a distiller makes entry of any vessel, utensil, house, room, or place as intended to be used for more than one purpose, he shall for each offence incur a fine of two hundred pounds.

(6.) If any vessel, utensil, fitting, house, room, or place used by a distiller, for any purpose connected with his business,—

(a.) is not specified in the account required to be delivered on making entry; or

(b.) is not numbered as so specified; or

(c.) is in any other place, or used or applied for any other purpose, than as so specified; or

(d.) does not in all respects correspond with the representation thereof as so specified;

the distiller shall, for each offence, incur a fine of five hundred pounds, and every such vessel or utensil, with its contents, and all spirits or materials for distilling spirits found in any such place, shall be forfeited.

20. An entry must not be withdrawn whilst there remains in any place mentioned therein, any still, or in any place, vessel, or utensil mentioned therein, any materials preparing or fit for distillation, or any spirits liable to duty.

Continuance of entry.

Materials for Distillation

21. A distiller may use in the brewing or making of wort or wash any material of such a nature that the gravity of the wort or wash produced therefrom can be ascertained by the prescribed saccharometer.

Materials for brewing and distillation.

22. (1.) A distiller must not distil spirits except from wort or wash brewed or made in his distillery.

Distiller to use only wort made in his distillery.

(2.) If a distiller has in his possession any wort, wash, low wines, feints, or fermented liquor not brewed, made, or distilled in his distillery, he shall forfeit the same, and also incur a fine of two hundred pounds.

23. (1.) A distiller must not, without the consent of the Commissioners, remove any sugar from the place entered as a sugar store, except for use in the manufacture of spirits.

Use of sugar.

(2.) Not less than four hours before removing any sugar for this purpose, he must give the officer in charge of the distillery written notice, specifying the time of the intended removal, and the quantity to be removed.

(3.) At the time so specified, the distiller must convey the specified sugar immediately from the sugar store to the mash tun or other entered vessel, to be there immediately used in the manufacture of spirits.

(4.) He must forthwith deposit again in the sugar store all sugar so removed and not so used.

(5.) If a distiller contravenes this section he shall for each offence incur a fine of fifty pounds.

Brewing and Distilling

24. A distiller must not mash any materials, or brew, or make wort or wash, or use a still, between eleven o'clock in the afternoon of Saturday and one o'clock in the forenoon of Monday.

Unlawful hours for brewing and distilling.

If a distiller contravenes this section he shall incur a fine of fifty pounds.

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Brewing and
distilling
periods.

25. (1.) The period of brewing or making wort or wash (in this Act called the brewing period), and the period of distilling spirits (in this Act called the distilling period), must, in every distillery, be alternate and distinct.

(2.) The brewing period extends from the commencement of any process of wetting, brewing, or mashing any materials until all the wort or wash in the distillery has been collected in the fermenting backs and wash chargers, and the declaration required by this Act of such collection has been given.

(3.) The distilling period extends from the commencement of the distillation of any wash until all the wash, low wines, and feints in the distillery, or in the possession of the distiller (except the feints produced by the last re-distillation), have been distilled into spirits and conveyed into the spirits receiver, and each furnace door, or the steam pipe of each still, has been secured by the officer in charge of the distillery.

(4.) Except as by this Act provided, a distiller must not use any still before the expiration of two hours after the end of the brewing period.

(5.) Except as by this Act provided, a distiller must not mash any materials or brew or make any wort or wash during the distilling period.

(6.) A distiller may, immediately after all the wash in his possession has been removed into a wash charger, begin to brew wort, but only on condition that all the wash so removed be forthwith distilled, and that every still be worked off and secured within the following times; (that is to say,) in the case of a low wines still, within thirty-two hours from the time when the wash was removed into the wash charger, and in the case of any other still within sixteen hours from that time.

(7.) If a distiller contravenes this section he shall for each offence incur a fine of five hundred pounds.

Notice in the
case of a dis-
tiller com-
mencing or
re-commencing
business.

26. (1.) Every distiller must, at least six days before beginning to brew wort, or, if he has discontinued brewing wort for more than one month, before recommencing to brew wort, give the proper officer a written notice, specifying the day on which he intends to brew or recommence brewing.

(2.) If a distiller contravenes this section, or if any wort or wash is found in the distillery or possession of a distiller before the notice required by this section is given, or before the day specified in the notice given by him, or if there is found in his possession any wort or wash which he may not lawfully have in his possession, he shall for each offence incur a fine of two hundred pounds, and forfeit all the wort or wash so found.

Notice in the
ordinary
course of busi-
ness to be
given before
each brewing.
Declaration as
to wort.

27. A distiller must, at least four hours before he mashes any materials or brews for making wort, give the officer in charge of the distillery written notice specifying the day and hour when the mashing or brewing is to be commenced.

If a distiller mashes or brews without giving such notice, he shall incur a fine of fifty pounds.

28. (1.) All wort must be collected into the fermenting back within eight hours after it has begun to run into the back.

(2.) Immediately after the wort is so collected the distiller must deliver to the officer in charge of the distillery a written declaration specifying—

(a.) The number of the back in which the wort is contained; and

(b.) The gravity or (if yeast has been added) the original gravity of the wort; and

(c.) The quantity thereof as measured by the number of dry inches, that is to say, by the number of inches between the dipping place of the back and the surface of the wort contained therein.

(3.) If a distiller makes default in complying with the provisions of this

section, or if the declaration delivered by him contains any untrue statement, he shall for each offence incur a fine of two hundred pounds. **Sect. 28.**

29. If after the declaration has been delivered the gravity of the wort shall be found to exceed the gravity therein specified or the quantity of the wort or wash shall be found to exceed by five per centum the quantity of wort therein specified, the distiller shall incur a fine of two hundred pounds. Penalty for excess of wort or wash beyond that specified in declaration.

30. If after an officer has taken an account of the gravity or quantity of the wort or wash in a fermenting back any wort or wash is found in the back which exceeds in gravity, or exceeds by five per centum in quantity, the wort or wash of which the account has been taken, the following consequences shall ensue:— Penalty for excess of wort or wash on comparison of accounts.

(a.) All wort or wash found in the back shall be considered as new, and as not included in any former charge against the distiller; and

(b.) The distiller shall be charged with duty in respect of the whole thereof as not being before charged: and

(c.) The wort or wash of which account had previously been taken shall be deemed to be distilled or decreased, and the distiller shall be charged for a quantity of spirits in respect thereof as for wort or wash actually distilled or decreased; and

(d.) The distiller shall incur a fine of two hundred pounds.

31. A distiller must not add yeast or other matter capable of causing fermentation to wort or wash in any vessel except a fermenting back. Yeast not to be added except in backs.

If a distiller contravenes this section he shall incur a fine of two hundred pounds.

32. (1.) A distiller may, subject as in this section mentioned, either remove yeast from the wort or wash in a fermenting back, or leave the yeast and sediment in a back, and remove the wort or wash to an empty back. As to use of yeast.

(2.) The quantity of yeast removed from or the quantity of yeast and sediment left in the fermenting backs whether computed separately or together must not exceed fifteen per centum of the wort brewed in the brewing period and must not exceed in any one back twenty per centum of the wort (b) or wash in the back.

(3.) If yeast is removed from and yeast and sediment left in the same back, the total quantity of yeast removed and yeast and sediment left must not exceed the same proportion.

(4.) Four hours before removing any wort or wash the distiller must give the officer in charge of the distillery written notice specifying the backs from which and to which the wort or wash is to be removed.

(5.) No wort or wash may be removed from a back until an account thereof has been taken by the officer.

(6.) In calculating duty no abatement shall be made on account of any yeast removed from or yeast and sediment left in any back.

(7.) A distiller may manufacture in his distillery into a solid substance any yeast removed from, or any yeast and sediment left in a back under this section, and may send out of his distillery or add to the wort or wash in any back therein, any such yeast or sediment, whether so manufactured or not.

33. (1.) A distiller must, at least four hours before beginning to make bub or any other composition for promoting the fermentation of wort or wash, give the officer in charge of the distillery written notice, specifying the time when and the vessel in which the composition is to be made, the fermenting back into which it is to be put, and the quantity to be put into such back. As to making bub or other fermenting composition.

(2.) The quantity of the composition must not exceed five per centum of the wort or wash to which it is added.

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(3.) The gravity of the composition must not exceed sixty degrees, and must not be increased after the officer has taken an account thereof.

(4.) The whole of the composition must be conveyed into the back specified in the notice within twenty-four hours after the time therein specified for making the composition.

(5.) If a distiller contravenes any provision of this section he shall, for each offence, incur a fine of two hundred pounds.

Refilling backs during brewing period.

34. (1.) When fermentation has ceased in a fermenting back a distiller may, during the brewing period, on giving the notice required by this Act before the removal of wash, remove the whole of the wash from the back to the wash charger, and refill the back with fresh wort.

(2.) The wash so removed must be secured in the wash charger until the commencement of the distilling period.

Declaration at end of brewing period.

35. (1.) When the whole of the wort or wash made in a distillery during one brewing period is collected into the fermenting backs or into the fermenting backs and wash charger, the distiller must give the officer in charge of the distillery a written declaration to that effect.

(2.) If the declaration is untrue in any particular, or any still in the distillery is used before the expiration of two hours after the delivery thereof, the distiller shall incur a fine of two hundred pounds.

Penalty where original gravity exceeds gravity as declared.

36. If the original gravity of any wort or wash as ascertained from any sample of wash taken from a fermenting back or wash charger exceeds by more than two degrees the gravity thereof as declared by the distiller, he shall incur a fine of two hundred pounds, and a further fine of sixpence for every gallon of wash contained in the vessel from which the sample was taken.

Mode of ascertaining gravity of wort or wash.

37. (1.) The gravity of wort or wash shall be ascertained by the prescribed saccharometer, and in calculating the same a degree of gravity shall be taken as equal to one thousandth part of the gravity of distilled water at sixty degrees Fahrenheit.

(2.) To ascertain the original gravity of the wort from which wash is made, a definite quantity by measure of the wash must be distilled, and the distillate and spent wash each made up with distilled water to the original measure of the wash before distillation:

(3.) The specific gravity of each must then be ascertained.

(4.) The number of degrees and parts of a degree by which the specific gravity of the distillate is less than the specific gravity of distilled water shall be deemed the spirit indication of the distillate.

(5.) The specific gravity of the spent wash added to the degree of original gravity which in Table A. in the Second Schedule(c) is set opposite the degree of spirit indication shall be deemed the original gravity of the wort.

(6.) All weighings and measurements for any of the above purposes must be made when the liquid is at sixty degrees Fahrenheit.

(7.) The distiller or any person acting on his behalf may, if the distiller so desires, be present at any such process for ascertaining original gravity.

As to mode of distilling.

38. (1.) Four hours before any wash is removed from a fermenting back, the distiller must give the officer in charge of the distillery written notice specifying the number of the back, and the day and hour of the intended removal.

(2.) At the time so specified the officer shall attend, and after he has locked the discharge cock of the wash charger, and removed the fastenings which prevent the passage of the wash from the back to the charger, but not before, the

(c) This schedule gives the weight per gallon.

whole of the wash, or, if the charger is not capable of containing the whole, then one half at least, must be removed from the back to the charger. Sect. 38.

(3.) When the wash has been so removed and the fastenings have been secured, the officer may take an account of the quantity and the gravity of the wash.

(4.) After account has been so taken of the contents of a wash charger, no wash may be removed from a back into the same charger before the whole of the contents of that charger have been removed into the still or intermediate charger.

(5.) The produce of all or any of the backs filled in the same brewing period may be collected in the receivers for such produce.

(6.) Subject to the provisions of this section as to feints remaining from a previous distillation, all produce so collected must, throughout the whole course of its distillation, and until the removal to the spirit store of the spirits produced therefrom, be kept unmixed with any other matter, and separate from all other produce.

(7.) Any feints produced by and remaining from a previous distillation may be mixed with the low wines or feints produced by a subsequent distillation, and the process of re-distilling feints may be repeated as often as the distiller thinks fit.

(8.) Not less than four hours before the removal of any low wines, feints, or spirits from a receiver, the distiller must give the officer in charge of the distillery written notice specifying the day and hour of the intended removal.

(9.) At the time so specified the officer shall attend, and after he has taken an account of the contents of the receiver, and removed the fastenings of its pump or discharge cock, but not before, the whole contents of the receiver must be forthwith removed therefrom, and conveyed, if low wines or feints, into the proper charger, but if spirits, into a vat or cask in the spirit store.

(10.) After the fastenings have been so removed, no other low wines, feints or spirits may be conveyed into the receiver until the whole of its contents have been removed therefrom and the fastenings again secured.

(11.) If a distiller contravenes any of the foregoing provisions of this section he shall, for each offence, incur a fine of two hundred pounds.

(12.) Where a distiller has secured his low wines and feints pumps to the satisfaction of the Commissioners he may run low wines and feints together into the same receiver and may at any time without notice remove low wines and feints from a receiver to a charger and re-distil them.

(13.) Where a still is connected with two spirit receivers the distiller may collect in each receiver alternately the spirits produced from any distillation or re-distillation, and when he has run into either receiver as much spirits as he thinks fit, he shall give notice to the officer, who shall thereupon lock the charging cock. No spirits may be removed from any such receiver until the expiration of two hours from such notice, nor except after the notice of removal required by this section.

39. At the end of every distilling period the distiller, or the principal manager of the distillery, must sign and deliver to the proper officer a return in the prescribed form specifying, with respect to the brewing and distilling period— Return at end of distilling period.

(a.) The quantity of each description of material used in making wort or wash during the period; and,

(b.) The quantity of wort or wash decreased or distilled during the period; and,

(c.) The quantity of spirits computed at proof produced during the period; and,

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(d.) The quantity of feints remaining at the end of the period.

If default is made in making the return required by this section, or if the return is untrue in any particular, the distiller shall incur a fine of two hundred pounds,

Power to test
by distillation.

40. (1.) For the purpose of testing the quantity of spirits at proof in any wash by distillation, the proper officer may require any charger or receiver in a distillery to be emptied and cleaned, and any quantity of the wash to be distilled, and the produce to be conveyed into the charger or receiver. For this purpose all persons in the employ of the distiller must, on request and on reasonable notice, provide the officer with assistance and fuel.

(2.) All low wines, feints, and spirits so distilled and conveyed into a charger or receiver must be kept therein unmixed with any other thing until the officer has taken an account of the quantity and strength thereof.

(3.) If a distiller contravenes any of the foregoing provisions of this section, he shall incur a fine of two hundred pounds.

(4.) If the quantity of proof spirits produced from the wash exceeds the proportion of one gallon and a quarter for every hundred gallons of wash in respect of every five degrees of attenuation, that is to say, in respect of every five degrees of difference between the highest gravity of the wort from which the wash was produced as declared by the distiller or as found by the officer, and the lowest gravity of the wash as taken by the officer, the distiller shall incur a fine of two hundred pounds, and, in addition, of sixpence for every gallon of wash from which the wash so distilled was taken.

Low wines or
spirits not to
be mixed so as
to increase
gravity.

41. There must not be mixed with or added to any low wines, feints, or spirits in a distillery any substance which either increases the gravity thereof, or prevents the true strength thereof from being ascertained by Sykes's hydrometer.

(2.) If this section is contravened, the distiller shall, for each offence, incur a fine of two hundred pounds, and all low wines, feints, spirits, and mixtures with respect to which the offence is committed shall be forfeited.

Samples

Power for
officer to take
samples.

42. (1.) An officer may take a sample of any wort, wash, low wines, feints, or spirits from any vessel or utensil in a distillery, and the gravity or strength of any sample so taken shall be deemed the gravity or strength of the whole contents of the vessel or utensil from which it is taken.

(2.) A distiller may, if he wishes, before any such sample is taken, stir up and mix together all the liquor contained in the vessel or utensil from which the sample is to be taken.

Spirits in Store

As to distiller's
spirit store.

43. (1.) No spirits may be brought into a distiller's spirit store unless they have been distilled in his distillery, and conveyed directly from the spirit receiver into the store.

(2.) No spirits which have been removed from the store may be brought back into the store.

(3.) The officer in charge of the store must, when required, attend at the store between five o'clock in the forenoon and eight o'clock in the afternoon on every day, except Sunday.

(4.) All spirits in the store must be filled into casks, in the presence of the officer, in the prescribed manner.

(5.) Spirits may not be removed from the store at any less strength than twenty per centum below proof, nor at any strength above twenty-five and under forty-three per centum over proof.

(6.) Spirits may not be removed from the store in any quantity less than nine gallons.

(7.) The casks in which spirits are removed may be either full or, subject to the prescribed regulations, on ullage.

(8.) All the spirits distilled in one distilling period (except a quantity not exceeding one hundred and fifty gallons, and in one ullage cask) must be removed from the store within ten days from the termination of that period, and before any spirits distilled in a succeeding period are brought into the store.

(9.) When all the spirits distilled in one distilling period have been removed from the spirit store, or at the end of ten days from the termination of that period, whichever first happens, the proper officer shall strike a balance in the account kept by him for the distillery.

(10.) If any spirits are brought into or found in or removed from a distiller's spirit store in contravention of this section the distiller shall, for each offence, incur a fine of two hundred pounds, and the spirit in respect of which the offence is committed shall be forfeited.

(11.) If any spirits are found in a distiller's spirit store after the time at which they are required by this section to be removed therefrom, the distiller shall incur a fine of twenty shillings for every gallon of spirits so found.

(12.) Every distiller must, to the satisfaction of the Commissioners, provide accommodation at his spirit store for the officer in charge thereof, and, in default of doing so, shall incur a fine of fifty pounds.

44. (1.) The proper officer shall from time to time take an account in the prescribed manner of the quantity of spirits in a distiller's spirit store.

Account of stock and penalty for excess or deficiency.

(2.) If the quantity of spirits computed at proof found in the store is greater or less than the quantity which, according to the account so taken, ought to be therein, the distiller shall incur a fine of twenty shillings for every gallon of spirits so in excess or deficient, and the spirits (if any) in excess shall be forfeited.

(3.) But a distiller shall not be liable to any penalty under this section if the excess does not exceed one half per centum, or the deficiency three per centum on the balance struck when the account was last taken, together with the quantity since brought in from the spirit receiver, nor if he satisfies the Commissioners that the deficiency does not result from fraud.

(4.) Where there is an excess, and the distiller is not prosecuted in respect thereof, he shall pay duty on the excess.

45. Subject to the prescribed regulations and the prescribed security, spirits may be removed from a distiller's spirit store for exportation or for ship's stores without payment of duty.

Spirits may be removed from a store for exportation or ship's stores.

Charging and Payment of Duty.

46. (1.) The duty on spirits made in a distillery is to be charged in respect of the wort or wash, the low wines, and the feints and spirits made in the distillery, and shall be payable according to such of those modes of charge as produces the greatest amount of duty.

Regulations for charging duty.

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(2.) In respect of every one hundred gallons of wort or wash the duty is to be charged for a quantity of spirits at the rate of one gallon of spirits at proof for every five degrees of attenuation, that is to say, for every five degrees of difference between the highest gravity of the wort as declared by the distiller or found by the officer (whichever is the greater) without any allowance for waste, bub, dregs, yeast, or other matter, and the lowest gravity of the wash as found by the officer before distillation.

(3.) In respect of low wines the duty is to be charged on the quantity of spirits at proof contained therein, less five per centum.

(4.) In respect of feints and spirits the duty is to be charged on the quantity of spirits at proof after deducting the feints (if any) remaining from a previous distillation and included in the account of feints and spirits last produced.

(5.) In calculating the duty payable on spirits an allowance shall be made for any deficiency occasioned by natural waste, subject to the following provisions—

(a.) The allowance shall not exceed one and a half per centum on the spirits removed from the receiver to the store.

(b.) If the deficiency exceeds three per centum on the spirits so removed no allowance whatever shall be made.

Return as to
payment of
duty.

47. (1.) The proper officer shall from time to time make out in the prescribed manner and for the prescribed period a return of the quantity of spirits for which a distiller is chargeable, and of the duty payable thereon, and shall, if required in writing by the distiller, deliver to him, or leave at his distillery, a copy of this return, signed by the officer.

(2.) If a distiller does not, within the prescribed time and in the prescribed manner, pay the duty with which he is charged in the return, he shall incur a fine of twenty pounds, and forfeit double the duty payable by him.

48. [Power to distrain for duties in arrear.] (d)

Warehousing

Distiller's
warehouse.

49. (1.) A distiller may provide a warehouse on his premises for warehousing spirits distilled on the same premises without payment of duty.

(2.) Every such warehouse must be approved by the Commissioners and entered by the distiller.

Excise ware-
house.

50. (1.) The Commissioners may approve Excise warehouses for warehousing spirits without payment of duty. (e) Such warehouses shall be for the general accommodation of persons desiring to warehouse spirits.

(2.) The proprietor or occupier of an Excise warehouse must give the prescribed security.

Accommoda-
tion for officer
to be provided.

51. In the case of a distiller's warehouse or of an Excise warehouse, the distiller or the proprietor or occupier must, to the satisfaction of the Commissioners, provide accommodation at the warehouse for the officer in charge thereof, and in default of doing so shall incur a fine of fifty pounds.

Liability for
spirits ware-
housed.

52. (1.) The proprietor or occupier of a warehouse shall be alone responsible to the proprietor of any spirits warehoused therein for the custody of the spirits.

(2.) No action shall be brought against the Commissioners or any of

(d) See *ante*, p. 34.

(e) As to the charge on delivery from such warehouse, see 4 Ed. VII. c. 7, s. 6.

their officers for loss or damage occasioned to spirits whilst warehoused in such warehouse, or on account of any wrong or improper delivery of spirits therefrom. (f) Sect. 52.

53. The Commissioners may revoke their approval of a warehouse, and upon such revocation all spirits warehoused therein must be removed as the Commissioners direct, and no abatement of duty or allowance shall be made in respect of any such spirits for deficiency of quantity or strength after notice of the revocation has been given to the proprietor or occupier of the warehouse. Revocation of approval of warehouse.

54. The Commissioners may, if they think fit, themselves provide Excise warehouses, and may charge for spirits warehoused therein warehouse rent at the prescribed rate, not exceeding one penny per week for forty gallons. This rent must be paid by the proprietor of the spirits to the collector, and shall be a lien on all spirits warehoused in the same warehouse belonging to such proprietor. Crown warehouse.

55. If any spirits warehoused in an Excise warehouse provided by the Commissioners are destroyed by fire, or by the falling of the warehouse or of any part thereof, no claim for compensation shall be brought against Her Majesty or the Commissioners or any of their officers in respect of the spirits destroyed, but no duty shall be payable in respect thereof. Liability for spirits in Crown warehouse.

56. (1.) A distiller may, subject and according to the provisions of this Act and to the prescribed regulations, and to the prescribed security, warehouse, without payment of duty, in the distiller's warehouse any spirits distilled on his premises. Warehousing in distiller's warehouse.

(2.) The spirits may be warehoused in casks or in vats.

(3.) The spirits must not be of any strength other than that allowed on removal from the spirit store.

57. Where a distiller has given the prescribed security under which he may remove spirits from one warehouse to another, he may, subject to the provisions of this Act and to the prescribed regulations, remove any spirits directly from his store to an Excise or Customs warehouse, and all spirits so removed shall be deemed to have been first warehoused in the distiller's warehouse and removed therefrom under the provisions of this Act. Constructive warehousing by distiller.

58. (1.) The casks in which spirits are warehoused by a distiller may be either full or on ullage, but each cask must contain not less than nine gallons, and on the outside of each end thereof there must be legibly cut, branded, or painted with oil colours the mark, number, capacity, and contents of the cask and the year in which it is warehoused. All the casks warehoused in a distiller's warehouse or from the same distillery in any one year must be continuously numbered, beginning with number one for the cask first warehoused in such year. Regulations as to warehousing by distiller.

(2.) A distiller must, not less than twenty-four hours before removing spirits from his store to his distiller's warehouse or an Excise warehouse, give the officer in charge of the store, and also the officer in charge of the warehouse, written notice of the day and hour when he intends to begin the removal.

(3.) He must by the same notice, or by a further written notice given to each of these officers not less than one hour before the removal, specify the mark, number, and capacity of each cask which he intends to warehouse, and the number of gallons and the strength of the spirits contained in each cask.

(f) See *Distillers Co. v. Russell's Trustee*, 16 R. 479; *Brewis v. Robertson*, 23 Sc. L. R. 449.

Sect. 58.

(4.) All spirits removed at the same time from the store to warehouse must be of the same strength, and with one per centum of the strength specified in the notice.

(5.) The removal of spirits must not take place except on the day specified in the notice, nor except between the hours of eight o'clock in the forenoon and three o'clock in the afternoon.

(6.) The officer in charge of the warehouse shall give to the distiller a certificate in the prescribed form in relation to the spirits warehoused, and the certificate shall forthwith be delivered over to the officer in charge of the distillery.

(7.) In the case of spirits warehoused in a Customs warehouse the authorized officer of Customs at the warehouse shall give to the distiller a receipt in the prescribed form for the spirits, and the receipt shall be forthwith delivered over to the officer in charge of the distillery, who shall give to the distiller a copy thereof signed by him.

(8.) The officer in charge of the distillery, after the delivery of any such certificate or receipt, shall deduct from the number of gallons of spirits for which the distiller is chargeable with duty the number of gallons of spirits warehoused computed at proof.

(9.) If a distiller or any other person produces a receipt, purporting to express that spirits have been warehoused in a Customs warehouse, which receipt is untrue in any particular, he shall incur a fine of two hundred pounds.

Warehousing
re-imported
spirits.

59. The proprietor of any plain spirits re-imported into the United Kingdom may, on the issue by the Commissioners of Customs of a bill of store for the spirits, and on the repayment of the allowance granted on the exportation thereof, warehouse the spirits in an Excise or Customs warehouse.

Stowage of
casks in ware-
house.

60. All casks warehoused must be arranged and stowed in such manner that access can be easily had to each cask.

If a distiller or the proprietor or occupier of a warehouse fails to cause the casks therein to be so arranged and stowed he shall incur a fine of five pounds.

Inspection of
spirits in
warehouse.

61. (1.) The proprietor of spirits warehoused may, in the presence of the officer in charge of the warehouse, view and examine the spirits, and show them for sale, and examine the state of the casks, and prevent leakage and drainage therefrom.

(2.) The officer shall, on request, attend at all reasonable times for this purpose, but not more than once in twenty-four hours.

Transfer to
purchaser in
distiller's
warehouse.

62. Spirits in a distiller's warehouse may, on the prescribed security being given by the distiller, be transferred to a purchaser, but no further transfer may be made of them whilst remaining in the same warehouse.

Transfer to
purchaser in
Excise ware-
house.

63. British spirits warehoused in an Excise warehouse in the name of a distiller or dealer may be transferred into the name of a purchaser on his producing to the officer in charge of the warehouse a written order for the delivery thereof, signed by the proprietor of the spirits, and countersigned by the proprietor or occupier of the warehouse or his servant acting for him at the warehouse. Spirits so transferred shall be discharged from all claim in respect of duties, penalties, or forfeitures to which the transfer is liable, but may not be delivered out of the warehouse for home consumption until payment of the duties chargeable thereon.(g)

Vatting, blend-
ing, or racking
in warehouse.

64. (1.) The proprietor of spirits warehoused in a distiller's or Excise warehouse may, in accordance with the prescribed regulations, vat, blend, or rack them in the warehouse, either on payment of duty or otherwise.

(g) See *Brevis v. Robertson*, *ubi sup.*

(2.) Every cask containing racked or blended spirits must be marked in the prescribed manner. Sect. 64.

(3.) If the proprietor of any racked or blended spirits in a warehouse fails to have the casks containing the spirits marked as by this section required, and to keep them so marked, he shall incur a fine of fifty pounds.

65. (1.) The Commissioners may require a distiller or a proprietor or occupier of an Excise warehouse to provide a separate room, secured to their satisfaction, for racking spirits on which duty has been paid. Racking duty-
paid spirits.

(2.) The officer in charge of the warehouse shall keep an account of all spirits computed at proof belonging to a proprietor of spirits which shall be received into the room and lawfully sent out therefrom.

(3.) If at any time a greater quantity of spirits is found in the room than ought, according to the account, to be there, the excess shall be charged with duty.

(4.) If the excess amounts to more than one per centum of the quantity of spirits brought in since the last preceding account, it shall be forfeited, and the proprietor of the spirits shall incur a fine of twenty shillings for every gallon of the excess.

66. (1.) In any warehouse the duty shall be paid on any deficiency exceeding the amount which can be accounted for by natural waste or other legitimate cause before racking, and also on any deficiency exceeding one per centum which occurs during the operation. Allowance
upon deficiency
in vatting,
blending, or
racking.

(2.) If, after duty has been paid on any spirits, a portion thereof is racked or drawn off from the cask, no further abatement or allowance for deficiency shall be made in respect thereof whilst they remain in warehouse.

67. (1.) A distiller may, in an Excise warehouse specially approved for the purpose, and in accordance with the prescribed regulations, reduce with water any plain spirits of a strength not less than forty-three per centum over proof to any strength at which spirits may be removed from a distiller's spirit store. Reducing
spirits in
warehouse.

(2.) The water used for this purpose must be supplied only through a service pipe and meter constructed, laid down, and fixed to the satisfaction of the Commissioners.

(3.) An allowance not exceeding one per centum shall be made on any deficiency occurring during the reduction.

68. (1.) The proprietor of spirits warehoused in an Excise warehouse may bottle the spirits on giving the officer in charge of the warehouse twenty-four hours previous notice of his intention to do so. Bottling
spirits in
warehouse.

(2.) He must provide and give the prescribed security, and the place in which the spirits are to be bottled must be approved by the Commissioners, must be adjacent to the warehouse, and must not be situate in the same court or yard, or have any communication with the premises of a rectifier, dealer, or retailer.

(3.) If the spirits are for home consumption they must be drawn off into imperial or reputed quart or pint bottles, and packed in cases containing one dozen quart bottles or two dozen pint bottles each, or any number of dozens.

(4.) Each case must be fastened, secured, and marked in the prescribed manner in the bottling place.

(5.) Subject as aforesaid, spirits must be bottled, packed, and removed in accordance with the prescribed regulations.

(6.) If at any time there is found in the quantity of spirits belonging to the proprietor a deficiency since the last account was taken exceeding by two per centum in the quantity removed by him into the bottling place, he shall be charged with duty on such deficiency.

(7.) Spirits so bottled may not be removed for home consumption,—

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(a.) by a distiller, unless he is also licensed as a dealer, in a quantity less than five dozen imperial or reputed quart bottles, or ten dozen imperial or reputed pint bottles;

(b.) by any person in a quantity less than one dozen imperial or reputed quart bottles, or two dozen imperial or reputed pint bottles.

Sweetening
and colouring
in warehouse.

69. A distiller or a rectifier may, in accordance with the prescribed regulations, and on giving to the proper officer, or the authorised officer of Customs, one day's notice, add any sweetening or colouring matter, or any other ingredient, to any spirits warehoused by him in an Excise or Customs warehouse.

Fortifying.

70. Any spirits warehoused in an Excise or Customs warehouse, except British compounds, may be used in the warehouse for fortifying wines, or for any other purpose for which foreign spirits may be used under the Acts relating to the Customs.

Hours of re-
moval from
warehouse.

71. Spirits may not be removed from a distiller's warehouse before six in the forenoon or after six in the afternoon, nor from an Excise warehouse before eight in the forenoon or after four in the afternoon.

Removal from
one warehouse
to another.

72. Subject to the provisions of this Act, spirits warehoused may, in accordance with the prescribed regulations, and on the prescribed security being given, and at the risk of the proprietor thereof, be removed to any other warehouse except a distiller's warehouse.

Constructive
deposit on
removal.

73. Where spirits are to be warehoused in an Excise warehouse upon removal from another warehouse, the proprietor of the spirits may, on their arrival at, but before their actual deposit in, the warehouse, make an entry thereof, or of some portion thereof not being less than one cask, for removal for home consumption, or to another warehouse, or for exportation, or ship's stores, and thereupon the spirits of which entry is so made shall be considered as if they had been actually deposited, and may be delivered and removed accordingly.

Restriction on
removal of
British
liqueurs and
certain other
spirits.

74. Spirits to which any sweetening or colouring matter or any other ingredient has been added in warehouse, British liqueurs or tinctures or medicinal spirits, may not be delivered from a warehouse except for exportation or ship's stores, and must, when so delivered, be removed directly from the warehouse to the ship in which they are to be exported or used as stores. (h)

Delivery from
warehouse for
home con-
sumption.

75. (1.) Spirits may be delivered from a warehouse for home consumption after the full duty chargeable thereon has been paid.

(2.) The officer at the warehouse shall, on production to him of the receipt for the duty, allow the spirits to be removed.

(3.) The spirits must be conveyed to the place of destination and delivered there, without alteration or change, in the same casks or packages in which they left the warehouse.

Regulation for
charging duty
on spirits
warehoused.

76. On the delivery for home consumption from any warehouse of a cask or package of British spirits warehoused therein without payment of duty, duty shall be charged and paid on the quantity of spirits contained in the cask or package at the time of delivery. But if the quantity at that time is less than the quantity originally warehoused, then, unless the Commissioners or the Commissioners of Customs, as the case may be, are satisfied that no part of the deficiency is caused by fraudulent abstraction, duty shall be charged and

(h) Spirits to which any sweetening or colouring mixture or any other ingredient has been added in warehouse and spirits warehoused by a rectifier of spirits for exportation or ship's stores and British liqueurs may, if bottled and packed in

cases when delivered from a warehouse be removed notwithstanding anything in sections 74 and 95 to another warehouse for exportation or ship's stores: 58 & 59 Vict. c. 16, s. 8.

paid on the quantity so warehoused, or on such portion thereof as such Commissioners direct.

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77. (1.) If at any time any deficiency beyond that which can be accounted for by natural waste or other legitimate cause is found in any cask or package of British spirits warehoused, the Commissioners or the Commissioners of Customs may require immediate payment of duty on the quantity of spirits originally warehoused in the cask or package. (†)

In case of deficiency in spirits in a warehouse, duty on quantity warehoused to be paid.

(2.) If the person in whose name the spirits are warehoused refuses, on written demand by an officer, or an officer of Customs, to pay the duty, he shall forfeit double the amount thereof.

(3.) No spirits warehoused in his name shall be transferred or removed until the duty or forfeiture is paid.

78. The quantity of spirits contained in any vat, bottle, vessel, cask, or package warehoused may be calculated by weight, measure, or gauge, as the Commissioners or the Commissioners of Customs may direct.

Mode of calculating quantity of spirits warehoused.

79. Where British spirits are delivered from a Customs warehouse for home consumption, and in all cases where duty is payable on such spirits in such warehouse, the duty payable shall be collected according to the laws and regulations for like spirits in an Excise warehouse by the officers of Customs under the direction of the Commissioners of Customs and paid into the Bank of England to the account of the Receiver General of Inland Revenue, and dealt with as other duties of Excise.

Payment of duty on delivery of spirits from Customs warehouse.

80. Where foreign spirits are delivered from an Excise warehouse for home consumption, the duty payable thereon shall be collected by an officer under the direction of the Commissioners according to the laws and regulations for like spirits in a Customs warehouse, and paid into the Bank of England to the account of the Commissioners of Customs, and dealt with as other duties of Customs.

Application of warehousing provisions to foreign spirits in an Excise warehouse.

81. (1.) The proprietor of spirits in a distiller's or Excise warehouse may, on giving notice and the prescribed bond, remove the spirits for exportation without payment of duty.

Removal from warehouse for exportation.

(2.) The notice must be delivered to the officer in charge of the warehouse not less than twenty-four hours before the time when the proprietor intends to ship the spirits, and must specify the mark, number, and capacity of each cask or package intended to be shipped, the number of gallons and strength of the spirits contained in each such cask or package, the time and place of the intended shipment, and the name or description and destination of the ship.

(3.) The officer may place any prescribed mark on each cask or package intended for exportation.

(4.) The bond given by the proprietor must, subject to the prescribed regulations, be conditioned that the spirits specified in the notice given from time to time shall be conveyed to the quay where the ship is lying, shall be put on board the ship, and shall (the danger of the seas or enemies excepted) be exported to and landed at the port specified in the notice without alteration or change, and shall not be landed at any other place.

(5.) The spirits must be sent to the quay where the ship is lying, and delivered with the permit to the custody of the authorised officer of Customs there, and must remain in his custody until shipped.

(6.) On shipment the officer of Customs shall certify on the back of the permit the date of the shipment, the name of the ship, and the quantity of

(†) The decision of the Commissioners is final: *Macfarlane v. The Commissioners*, 22 D. 266.

Sect. 81. spirits, computed at proof, shipped, and shall send the permit to the collector of the collection from which the spirits were sent. (*k*)

Removal from warehouse for ship's stores. 82. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations and subject to the conditions, regulations, and restrictions required by any Act in force for the time being, be delivered out without payment of duty for ship's stores.

Removal from warehouse for methylation. 83. Spirits warehoused may, on the prescribed bond being given, subject to the prescribed regulations, be delivered out, without payment of duty, for methylation.

Offences with respect to warehousing. 84. If a distiller, or proprietor of spirits, or proprietor or occupier of an Excise warehouse, by himself, or by any person in his employ or with his connivance, commits any of the following offences; (that is to say,)

(*a.*) Opens any of the locks or doors of a warehouse, or makes or obtains access into an Excise warehouse, except in the presence of an officer acting in his duty as such; or

(*b.*) After the approval of a warehouse, makes any alteration therein or addition thereto without the previous consent of the Commissioners; or

(*c.*) Warehouses spirits in, or removes spirits from, a warehouse otherwise than is provided by this Act; or

(*d.*) By any contrivance or device privately removes or conceals any spirits either before or after they are warehoused,

he shall incur a fine of two hundred pounds; and all spirits warehoused, removed, or concealed in contravention of this section shall be forfeited.

Application of Customs Acts to British spirits in a Customs warehouse. 85. All the powers, provisions, regulations, and penalties contained in or imposed by any Act relating to the Customs as to the warehousing, custody, and delivery out of warehouse of goods liable to a duty of Customs, and as to any deficiencies therein or allowances thereon, shall, where applicable, be observed, applied, enforced, and put into execution with reference to British spirits warehoused in a Customs warehouse, so far as the same are not superseded by and are consistent with the provisions of this Act.

Rectifiers

Application to rectifiers of certain provisions relating to distillers. 86. The rules contained in the fourth, sixth, seventh, eighth, ninth, and tenth parts of the First Schedule, with the corresponding penalties, and the provisions of this Act with respect to the following matters:—

(*a.*) Alterations of vessels, utensils, and pipes;

(*b.*) Powers of Commissioners to allow use of additional or substituted utensils and fittings;

(*c.*) Penalty for interference with and attempt to defeat gauging;

(*d.*) Penalties for frauds and offences in relation to vessels and utensils;

(*e.*) Making entry;

(*f.*) Unlawful hours for distilling;

shall apply to every rectifier as if he were a distiller.

Entry must be made by a rectifier before he begins to receive, rectify, or compound any spirits.

Rectifier's premises not to be within a quarter of a mile of a distillery. 87. (1.) No person may make entry of or use for rectifying or compounding spirits, or for receiving or keeping spirits as a rectifier, any premises within a quarter of a mile of any premises entered or used for brewing or making wort or wash, or for distilling spirits, or for receiving or keeping spirits by a distiller.

(*k*) As to allowances see 43 & 49 Vict. c. 51, s. 3; 2 Ed. VII. c. 7, s. 5.

(2.) If any person contravenes this section he shall incur a fine of five hundred pounds for every week during which the premises are so entered or used. Sect. 87.

88. (1.) A rectifier keeping a still may not carry on upon his premises the business of a brewer of beer or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of wine. Rectifier's premises not to be connected with the premises of a brewer, etc.

(2.) No person may carry on the business of a rectifier keeping a still upon premises communicating otherwise than by an open public street or carriage road with any premises used by a brewer of beer or a maker of sweets, vinegar, cider, or perry, or a refiner of sugar, or a dealer in or retailer of spirits or a dealer in or retailer of wine.

(3.) If any person contravenes any of the foregoing provisions of this section he shall incur a fine of two hundred pounds.

(4.) The Commissioners may refuse to grant a licence for rectifying or compounding spirits on any premises in which from their situation with respect to a distillery they think it inexpedient to allow such business to be carried on.

89. (1.) A rectifier keeping a still must not have in his possession any wort, wash, fermented liquor, or materials capable of being distilled into low wines or spirits. Restrictions on business of rectifier.

(2.) No rectifier whatever may—

(a.) Distil or extract low wines or spirits from any material except spirits; or

(b.) Have in his possession any spirits for which he has not received and delivered to the proper officer a permit or certificate; or

(c.) Have in his possession any foreign spirits, except for the purpose of being rectified or compounded by him as spirits of wine or as British compounds.

(3.) If a rectifier contravenes this section, he shall for each offence, in addition to any other penalty, incur a fine of five hundred pounds, or, at the election of the Commissioners, of twenty shillings for every gallon of wort, wash, fermented liquor, or other materials or of the low wines or spirits in respect of which the offence is committed.

(4.) If a rectifier is convicted more than once of an offence against this section, his licence shall become void, and he shall, during three years from the date of the conviction, be incapable of holding a licence as a rectifier.

90. (1.) A rectifier must, on receipt of any spirits, give notice thereof to the proper officer, and deliver to him the permit or certificate received with the spirits. Receipt of spirits by rectifier.

(2.) Unless the officer neglects to attend within one hour after receiving the notice, the rectifier must not, until the officer has taken account of the spirits so received, break bulk or draw off any part of the spirits or add water or anything thereto, or in any respect alter the same, or tap, open, alter, or change any cask or package containing any such spirits.

(3.) If a rectifier contravenes this section he shall incur a fine of two hundred pounds and forfeit the spirits in respect of which the offence is committed.

91. (1.) With respect to the business of a rectifier the rules in the Third Schedule must be observed. Scheduled rules with respect to rectifiers.

(2.) For any contravention of the rules in the first part of the Third Schedule the rectifier shall incur a fine of two hundred pounds.

(3.) For any contravention of the rules in the second part of the Third Schedule the rectifier shall incur a fine of one hundred pounds.

(4.) For any contravention of the rule in the fourth part of the Third

Sect. 91. Schedule the rectifier shall incur a fine of fifty pounds, and the spirits in respect of which the offence is committed shall be forfeited.

Penalty for mixing wine or wash with spirits.

92. An officer may take a sample of the contents of a still of a rectifier at any time before it has begun to work, or after it has ceased working, and if there is found in the still any wine or wash put into or mixed with low wines, feints, or spirits, the rectifier shall, in addition to any other penalty, incur a fine of five hundred pounds.

Quality and quantity of spirits allowed to be removed from stock of rectifier.

93. (1.) A rectifier must not send out any spirits except British compounds or spirits of wine, and must not send out any British compounds or spirits of wine in less quantity than two gallons.

(2.) If a rectifier contravenes this section, he shall, for each offence, incur a fine of fifty pounds; and all spirits sent out in contravention of this section, together with all horses, cattle, carriages, and boats made use of in conveying the same, shall be forfeited.

Account of stock, and penalty for excess or deficiency.

94. (1.) An officer shall from time to time take an account in the prescribed manner of the quantity and strength of the spirits in the stock of a rectifier, making allowance for the spirits for which certificates have been granted since the last account.

(2.) If a still is at work when the account is taken, all spirits produced from the charge of the still must be kept apart from the remainder of the stock until the account has been completed.

(3.) If, on balancing the stock, any excess appears, a quantity of spirits, computed at proof, equal thereto shall be forfeited, and the rectifier shall incur a fine of twenty shillings for every gallon of such excess.

(4.) If, on balancing the stock, there is any deficiency not duly accounted for by spirits sent out with certificate, and exceeding five per centum on the balance struck when the account was last taken, together with the quantity since lawfully received, the rectifier shall incur a fine of twenty shillings for every gallon of such deficiency. (1)

Power for rectifier to warehouse on drawback.

95. (1.) A rectifier may, subject to the provisions of this Act, and the prescribed regulations, warehouse in an Excise or Customs warehouse, for exportation or for ship's stores, or for home consumption, British compounds rectified or compounded by him from spirits on which duty has been paid, and not being British liqueurs or tinctures or medicinal spirits.

(2.) He may so warehouse for exportation or for ship's stores, but not for home consumption, British liqueurs, tinctures, or medicinal spirits compounded by him from spirits on which duty has been paid.

(3.) He may so warehouse, either for exportation or for ship's stores, but not for home consumption, spirits of wine rectified by him from spirits on which duty has been paid.

(4.) British compounds warehoused for home consumption must be of a strength not exceeding eleven degrees over proof.

(5.) British compounds and spirits of wine must be warehoused in casks either full or on ullage of one gallon or two gallons. All casks warehoused in any one year from the same premises must be numbered consecutively. The capacity of each cask must be not less than nine gallons, and there must be legibly cut, branded, or painted with oil colours on each end thereof—

(a.) The name and place of business of the rectifier:

(1) Where a person carries on upon one set of premises the business of a rectifier of spirits and also the business of a dealer in spirits, all spirits in his possession shall for the purpose of the account thereof and

the penalties consequent on any excess or deficiency found in the account under the Spirits Act 1880 be deemed to be spirits in his stock as a rectifier: 61 & 62 Vict. c. 46, s. 14.

- (b.) The number of the cask and the year in which it is warehoused :
- (c.) The capacity of the cask in gallons, and, if the capacity is less than eighty gallons, the quarter or quarters of a gallon of capacity above the number of entire gallons :
- (d.) The number of gallons, strength, and denomination of the spirits contained in the cask.
- (6.) The rectifier must, before warehousing spirits, deliver to the officer in charge of the warehouse or the authorized officer of Customs a warehousing entry specifying—
 - (a.) The particulars of the spirits, as set forth in the certificate :
 - (b.) The name of the rectifier :
 - (c.) The place whence the spirits are sent :
 - (d.) In the case of British liqueurs, or tinctures, or medicinal spirits, the number of gallons at proof of the spirits from which the contents of each cask were compounded.
- (7.) The strength of all spirits warehoused on drawback (except British liqueurs, or tinctures, or medicinal spirits) shall be deemed to be that ascertained by Sykes's hydrometer.
- (8.) Where a cask contains British liqueurs, or tinctures, or medicinal spirits, the officer shall take a sample from the cask ; and the sample shall be examined, under the direction of the Commissioners, or the Commissioners of Customs, by distillation or otherwise, and the strength as ascertained by the examination (*m*) shall, for the purposes of this Act, be deemed the true strength of the contents.
- (9.) When the officer has examined the spirits, he shall deliver to the rectifier a receipt specifying—
 - (a.) The marks, numbers, and capacity of each cask warehoused ; and
 - (b.) The number of gallons computed at proof, description, and strength of the spirits in each cask ; and
 - (c.) The total number of gallons computed at proof received with the certificate.
- (10.) The officer shall forthwith send to the collector of the collection in which the rectifier's premises are situate a certificate setting forth the name of the rectifier, the situation of his premises, and the other particulars required to be inserted in the receipt.
- (11.) The collector shall, on receiving three days written notice of the time when payment is required, and on production of the receipt, pay to the rectifier, or to any person authorized by him, a drawback of the duties on the spirits warehoused.
- (12.) Spirits warehoused for home consumption under this section may be delivered out for home consumption under the same rules and regulations and on payment of the same duty as spirits warehoused by a distiller.
- (13.) Spirits warehoused for exportation or ship's stores under this section must not be delivered out otherwise than directly from the warehouse to the ship in which they are to be exported or used as stores. (*n*)

Dealers and Retailers (o)

96. The first, second, and sixth rules contained in the seventh part of the First Schedule and the rules contained in the eighth part thereof, with the corresponding penalties, and the provisions of this Act with respect to the following matters—

(*m*) See 52 & 53 Vict. c. 42, s. 25.
 (*n*) See s. 74 (*n*).

(*o*) As to what is a dealer see *Tinwell v. Mayhook*, 1904, 2 K. B. 790.

Application to dealers and retailers of certain provisions relating to distillers.

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(a.) Penalty for interference with or attempt to defeat gauging, and
 (b.) Penalties for frauds and offences in relation to vessels and utensils,
 shall apply to every dealer and retailer as if he were a distiller.

Dealers and
 retailers to
 make entry.

97. Every dealer and retailer must, in accordance with the prescribed regulations, make entry in writing, signed by him, of every building, room, place, fixed cask, vessel, and utensil intended to be used by him for keeping spirits, distinguishing each place or thing by a separate letter or number.

Marking casks.

98. (1.) There must be legibly cut, branded, or painted with oil colour on some conspicuous part of every fixed cask or other vessel used by a dealer or retailer for holding spirits in stock, and on the outside of both the ends of every moveable cask used by him for keeping or delivering spirits, the number of gallons which the cask or vessel is capable of containing.

(2.) Every cask or vessel which does not bear the capacity thereof so cut, branded; or painted shall be forfeited with the contents, and the dealer or retailer shall incur a fine of fifty pounds.

Marking
 strength of
 certain spirits.

99. (1.) Where the strength of any spirits forming part of the stock of a dealer or retailer cannot be ascertained by Sykes's hydrometer, the dealer or retailer must, on being so required by an officer, cause the quantity and strength of the spirits to be legibly marked on the outside of the cask or vessel containing them.

(2.) Every cask or vessel which a dealer or retailer neglects or refuses, on being so required, to mark, or fails to keep so marked, or which is found to be untruly marked, shall be forfeited with the contents, and the dealer or retailer shall, for each offence, incur a fine of fifty pounds.

(3.) But a cask or vessel shall not be deemed to be untruly marked within the meaning of this section if the strength denoted by the mark corresponds with that expressed in the permit or certificate with which the spirits were received into stock, and no alteration has since been made in the spirits.

Restriction on
 grant of
 dealer's licence
 to distiller.

100. (1.) A distiller shall not be licensed to carry on the business of a dealer upon any premises within two miles from his distillery unless those premises are first approved by the Commissioners.

(2.) If a distiller carries on the business of a dealer on any approved premises within two miles from his distillery, no spirits shall be removed from such premises unless accompanied by a permit, and if any spirits are removed without a permit he shall incur the same fine and forfeiture as if the removal had been from his spirit store.

Situation of
 dealer's and
 retailer's
 premises.

101. (1.) A dealer or retailer must not carry on his business upon any premises communicating otherwise than by an open public street or carriage road with any premises entered or used by a distiller, or a rectifier keeping a still.

(2.) A retailer must not be concerned or interested in the business of a distiller, or of a rectifier keeping a still, carried on upon any premises within two miles from the premises on which he is licensed to carry on the business of a retailer.

(3.) If a dealer or retailer contravenes this section he shall for each offence incur a fine of two hundred pounds.

Restrictions on
 sale by dealers
 and retailers.

102. (1.) A dealer must not, unless he has an additional licence authorizing him so to do, or is also licensed as a retailer, sell, send out, or deliver spirits in any less quantity than two gallons of the same denomination at a time for the same person.

(2.) A retailer must not, unless he is also licensed as a dealer, sell, send out, or deliver spirits to a rectifier, dealer, or retailer, or buy or receive spirits from another retailer, not being also licensed as a dealer.

(3.) A dealer or retailer must not receive, send out, or have in his possession any British spirits of any strength exceeding that at which a distiller may send out spirits of the like denomination. Sect. 102.

(4.) If a dealer or retailer contravenes this section he shall for each offence incur a fine of fifty pounds, and in case of the spirits being of unlawful strength they shall be forfeited.

103. (1.) An officer may at any time take an account of the quantity of spirits in the stock or possession of a dealer or retailer. Penalty for excess in stock of dealer or retailer.

(2.) If the quantity of spirits computed at proof found on taking the account exceeds the quantity which ought according to the stock book of the dealer or retailer to be in his possession, the excess shall be forfeited and the dealer or retailer shall incur a fine of twenty shillings for every gallon of the excess.

104. The sale of spirits in any quantity less than two gallons or less than one dozen reputed quart bottles shall be deemed sale by retail. Meaning of sale by retail.

Permits, Certificates, and Stock Books

105. (1.) No spirits may be sent out or delivered from a distiller's store unless accompanied by a permit. Spirits required to be accompanied by permit or certificate.

(2.) No spirits may be removed from a distiller's or Excise warehouse unless accompanied by a permit.

(3.) No spirits may be removed from a Customs warehouse (the same not being under bond on removal from one such warehouse to another such warehouse) unless accompanied by a Customs certificate from an authorised officer of Customs.

(4.) No spirits may be sent out or delivered from the stock of a rectifier unless accompanied by a certificate.

(5.) No spirits may be sent out or delivered from the stock of a dealer unless accompanied by a certificate, except spirits not exceeding in quantity one gallon at a time sold by him under an additional licence or a licence to retail to a person not being a dealer or retailer.

(6.) No spirits exceeding in quantity one gallon of the same denomination at a time for the same person may be sent out or delivered from the stock of a retailer unless accompanied by a certificate.

(7.) Except as in this section is provided, no spirits exceeding the quantity of one gallon of the same denomination at a time for the same person may be sent out, delivered, or removed from any one place to any other place unless accompanied by a permit.

(8.) All spirits found to have been sent out, delivered, or removed, or in course of being sent out, delivered, or removed in contravention of this section, together with all horses, cattle, carriages, and boats made use of in conveying the same, shall be forfeited, and every person in whose possession the same are found shall incur a fine of one hundred pounds, or at the election of the Commissioners or the Commissioners of Customs a fine equal to treble the value of the spirits. (p)

(9.) If any question arises as to the accuracy of the description of spirits in a permit or certificate, the proof that the spirits correspond to the description shall lie on the owner or claimant of the spirits, who shall prove the same by the oaths of two credible witnesses, being skilful and experienced persons competent to decide by examination thereof.

(p) See *Leese v. Jennings*, 79 L. T. 300.

Sect. 106.

Mode of obtain-
ing permit.

106. (1.) A permit shall be granted by the proper officer upon a request note signed by a distiller or other person requiring a permit and delivered to the officer.

(2.) The request note must contain the particulars specified in that behalf in the Fourth Schedule.

(3.) The permit must contain all the particulars specified in the request note, and shall be in force for such limited time only as may be mentioned in the permit.

(4.) A permit shall not be granted to a distiller for any less quantity of spirits than nine gallons contained in one cask, or if the spirits are bottled, for any quantity less than five dozen imperial or reputed quart bottles or ten dozen imperial or reputed pint bottles.

(5.) A permit shall not be granted for the removal of spirits from the stock of a distiller (except for spirits to be warehoused) unless the receipt for the duty on the spirits to be removed be produced with the request note.

(6.) The officer must indorse on the receipt the quantity of spirits for which the permit is granted and the date of the permit.

Penalties for
removal of
spirits without
permit and
fraudulent use
of permit.

107. (1.) If any person—

(a.) sends out, delivers, removes, or receives any spirits required to be accompanied by a permit without a permit; or

(b.) sends out, delivers, removes, or receives any spirits in quantity greater than, or differing in quality, denomination, or strength from that expressed in the permit accompanying the same; or

(c.) having obtained a permit, does not send out therewith the spirits therein described or return the permit to the proper officer within the time by law required; or

(d.) requests, obtains, or uses any permit, or causes or suffers any permit to be requested, obtained, or used for any purpose other than that of accompanying the removal and delivery of spirits therein described; or

(e.) produces, or causes or suffers to be produced to any person any permit as having been received with spirits other than those therein described; or

(f.) in any manner uses, or causes or suffers to be used, any permit so that any account of spirits kept or checked by an officer may be frustrated or evaded;

he shall, in addition to any other penalty or forfeiture, incur a fine of five hundred pounds.

(2.) Every permit used for any purpose other than that of accompanying the removal and delivery of the spirits for which it is granted and as therein expressed, shall be deemed to be a false permit, and any unlawful use thereof shall, in addition to any other penalty or forfeiture, subject the person using it to all penalties and forfeitures imposed by law upon any person for using a false permit.

(3.) If a distiller, rectifier, dealer, or retailer is convicted of an offence against this section he shall forfeit his licence, and no new licence shall be granted to him for the remainder of the year for which such forfeited licence would have been in force.

Certificate
book,

108. (1.) Every rectifier, dealer, and retailer must, by written request, obtain from the proper officer a certificate book containing forms of certificates and counterfoils, for which he must give a receipt.

(2.) Before sending out or delivering any spirits required to be accompanied by a certificate, he must enter in one of these certificates, and in its counterfoil,

the particulars specified in that behalf in the Fourth Schedule, and must sign the certificate.

Sect. 108.

(3.) He must deliver the certificate with the spirits to the person to whom the spirits are entered in the certificate.

(4.) He must use the certificates in the order in which they are numbered in the certificate book.

(5.) He must keep the certificate book in his premises, open to inspection by any officer, and must allow any officer to make entry therein, or take any extract therefrom.

(6.) He must return the certificate book when it is exhausted, or on request, to the proper officer, who shall give a receipt for it.

109. (1.) If a rectifier, dealer, or retailer sends out, delivers, or receives any spirits required to be accompanied by a certificate without a certificate or accompanied by an inaccurate certificate, he shall for each offence incur a fine of one hundred pounds, and all spirits sent out, delivered, or received in contravention of this section shall be forfeited. Penalties in case of removal of spirits without certificate.

(2.) A penalty shall not be incurred under this section by reason only of the spirits being in strength not more than one per centum above or two per centum below the strength expressed in the certificate.

110. (1.) If a rectifier, dealer, or retailer uses or suffers to be used any certificate taken from his certificate book, except for the removal of spirits from his own stock, or delivers or parts with any form of certificate without filling it up, as required by this Act, he shall for each offence incur a fine of five hundred pounds. Fraudulent use of certificate.

(2.) If any person uses a certificate or form of certificate, whether filled up or not, so that the account of spirits kept or checked by an officer, or any examination of spirits by an officer, is or may be frustrated or evaded, he shall for each offence incur a fine of five hundred pounds. (7)

(3.) If a rectifier, dealer, or retailer is convicted of an offence under this section, he shall forfeit his licence, and no new licence shall be granted to him for the remainder of the year for which such forfeited licence would have been in force.

111. (1.) Every rectifier, dealer, and retailer must on receiving spirits accompanied by a permit or certificate, immediately cancel the permit or certificate in the prescribed manner, and must deliver the cancelled permit or certificate to the officer who first inspects his premises after the receipt thereof. Cancelling and delivery of permits and certificates.

(2.) If any person contravenes this section he shall incur a fine of fifty pounds.

(3.) But no penalty shall be incurred for the failure to deliver a permit or certificate if it is proved that the failure is caused by the permit or certificate having been lost or destroyed more than three months after the date thereof.

112. (1.) Every rectifier, dealer, and retailer must provide himself with and keep a stock book according to a pattern to be obtained on application to the proper officer, and must, on receiving any spirits, and also on sending out or delivering any spirits required to be accompanied by a certificate, enter in his stock book the particulars specified in that behalf in the Fourth Schedule. Stock book.

(2.) He must make these entries at such times as an officer directs, or in the absence of any such direction before the expiration of the day on which the spirits are received, sent out, or delivered.

(3.) He must keep the stock book in his premises, open to inspection by any officer, and must allow any officer to make any entry therein or take any extract therefrom.

Sect. 112. (4.) He must keep it open to such inspection for not less than twelve months after it is filled up.

Offences with respect to certificate books and stock books.

113. If a rectifier, dealer, or retailer—

- (a.) fails to obtain, provide, keep, produce, or return a certificate book or a stock book as by this Act required, or to make therein respectively the entries by this Act required; or
- (b.) hinders or obstructs any officer in examining a certificate book or a stock book, or in making any entry therein or extracting therefrom; or
- (c.) cancels, alters, obliterates, or destroys any part of a certificate book or a stock book or any entry therein; or
- (d.) makes a false entry in a certificate book or a stock book; or
- (e.) separates any certificate, or form of certificate, from its counterfoil without properly filling up the certificate and counterfoil, or except on the occasion of sending out or delivering spirits therewith;

he shall for each offence incur a fine of one hundred pounds. (r)

Miscellaneous

Rules for ascertaining quantity of spirits by weighing.

114. For the purpose of ascertaining by weighing the quantity of spirits in a cask, Table B. in the Second Schedule (s) shall be used, and the quantity ascertained thereby in accordance with the rates prefixed thereto shall be deemed to be the true quantity.

Remission of duty for spirits lost or destroyed.

115. In the event of the loss or destruction by fire or other unavoidable accident of any wash or spirits in a distillery, or of any spirits when deposited in a distiller's or excise warehouse, or whilst being received into or delivered from a spirit store or such warehouse, or whilst being removed under bond on shipboard, or whilst being shipped or landed, the Commissioners shall, on proof to their satisfaction of the loss or destruction, remit the duty payable or paid in respect of the wash or spirits so lost or destroyed.

PART II

METHYLATED SPIRITS

Part I. not to apply to methylated spirits.

116. Part I. of this Act shall not apply to methylated spirits.

Exemption of methylated spirits from duty.

117. (1.) A drawback of the duty payable on spirits shall not be allowed in respect of any duty-paid spirits used for methylation by a rectifier or any other person.

Persons authorized to methylate.

(2.) Methylated spirits shall, subject to the proviso of the Spirits Act, 1880, as amended by this Act, be exempt from duty. (t)

118. (1.) The following persons, and no others, are authorized to methylate :

- (a.) Distillers, if so authorized by the Commissioners.
- (b.) Rectifiers, if so authorized by the Commissioners.
- (c.) Persons licensed to methylate.

(2.) Such persons are called in this Act authorized methylators.

Persons authorized to supply methylated spirits.

119. The following persons, and no others, are authorized to supply methylated spirits :

(a.) Authorized methylators.

(b.) Persons licensed to retail methylated spirits, in this Act called retailers of methylated spirits.

(r) See *McIntosh v. The Commissioners*, 16 Sc. L. R. 477.

(s) As ascertained by Sykes's hydrometer. (t) 53 & 54 Vict. c. 8, s. 31.

120. The Commissioners may, if they think fit, authorize any person to receive methylated spirits from an authorized methylator for use in any art or manufacture carried on by him. The authority shall not be granted until the applicant has given the prescribed security that he will use the methylated spirit in the art or manufacture and for no other purpose, and that he will observe the provisions of this Act and the prescribed regulations. **Sect. 120.**
Authority to use methylated spirits.

121. An authorized methylator must not supply methylated spirits to any person except—
 (a.) a retailer of methylated spirits, (u) or
 (b.) a person authorized to receive methylated spirits, or
 (c.) if the methylator is a distiller, a rectifier authorized to methylate, or a person licensed to methylate. (x) **Persons to whom methylated spirits may be supplied by authorized methylator.**

122. (1.) Spirits may be methylated in the following places—

(a.) A building or room approved by the Commissioners and entered for the purpose by the methylator. **Place of methylation.**

(b.) A warehouse provided for the purpose by the Commissioners.

(c.) An Excise warehouse, with the permission of the Commissioners.

(2.) The Commissioners may charge for warehousing and labour at the rate of one penny per gallon per month for all spirits methylated or stored in a warehouse provided by them.

123. (1.) The following and no other spirits may be used for methylation :— **Materials for and mode of methylation.**
 (a.) Plain spirits of strength not less than fifty per centum above proof, and unsweetened foreign spirits of like strength.

(b.) Rum of strength not less than twenty per centum above proof.

(2.) The quantity of spirits used for methylation at any one time shall not be less than—

(a.) In the case of British spirits, four hundred and fifty gallons ;

(b.) In the case of foreign spirits in an Excise warehouse, the contents of the cask in which the spirits are imported.

(3.) The substance mixed with spirits for the purpose of methylation may be any combination (y) of substances approved for the purpose by the Commissioners ; and may, if the Commissioners think fit, be provided by them at the expense of the methylator.

(4.) The substance must, before the mixing thereof, be examined and approved by an officer appointed in that behalf.

(5.) Foreign spirits may not be used for methylation until the difference between the duty of Customs chargeable thereon and the duty of Excise chargeable on British spirits has been paid.

(6.) With respect to the removal of spirits and substances for methylation and the time and mode of methylation the prescribed regulations must be observed, and the prescribed security must be given.

124. (1.) An authorized methylator must not supply methylated spirits except in vessels containing not less than five gallons. **Supply and receipt of methylated spirits.**

(2.) Each vessel must be distinctly labelled with the words "methylated spirits" and must be accompanied by a permit or such document in the nature of a permit as the Commissioners may prescribe.

(u) Does not include the supply of industrial methylated spirits : 6 Ed. VII. c. 20, s. 2. These and mineralized must be so labelled.

(x) Any authorized methylator may supply methylated spirits to a person licensed to methylate : 52 & 53 Vict. c. 42, s. 25. It may be supplied in vessels

containing not less than a reputed quart provided that the quantity supplied by the methylator to any one person at a time is not less than five gallons : 53 & 54 Vict. c. 8, s. 32.

(y) 53 & 54 Vict. c. 8, s. 32 ; 6 Ed. VII. c. 20, s. 1.

Sect. 124.

(3.) The sale, delivery, and removal of methylated spirits from the premises of an authorized methylator must be in accordance with the prescribed regulations, and subject to the prescribed security.

(4.) Every person licensed as a retailer of (z) or authorized to receive methylated spirits must, on ordering the same, correctly fill up the prescribed form of requisition and counterfoil with the prescribed particulars, and send with the requisition a certificate signed by the proper officer that the applicant is a person so authorized, and must keep the counterfoil and produce it on request to any officer.

Stock account.

125. (1.) The proper officer shall keep a stock account of all spirits computed at proof methylated or received by an authorized methylator.

(2.) If the quantity of methylated spirits in the possession of an authorized methylator exceeds by more than one per centum the quantity which ought by the stock account to be in his possession he shall forfeit the whole excess. (a)

(3.) If the quantity of methylated spirits in the possession of an authorized methylator is less by more than two per centum than the quantity which ought by the stock account to be in his possession, he shall pay on the whole deficiency the duty payable on British spirits.

**Rules to be
observed by
retailers of
methylated
spirits.**

126. (1.) A retailer of methylated spirits—

(a.) must make entry with the Commissioners of each room or place where he intends to keep and sell the spirits; and

(b.) must not keep or sell the spirits in any place which is not so entered; and

(c.) must not receive or have in his possession at any one time a greater quantity of methylated spirits than fifty gallons; (b) and

(d.) must not receive methylated spirits except from an authorized methylator or a retailer of methylated spirits; and

(e.) must not receive methylated spirits from a retailer of methylated spirits in a quantity exceeding one gallon (b) at a time; and

(f.) must not sell to or for the use of any one person more than one gallon (b) of methylated spirits at a time; and

(g.) must, on request, at all reasonable times produce his stock of methylated spirits for examination by an officer; and

(h.) must keep an account, in the prescribed form, of his stock of methylated spirits and of the sale thereof.

If a retailer of methylated spirits contravenes this section he shall for each offence incur a fine of fifty pounds and the spirits with respect to which the offence is committed shall be forfeited.

**Powers of
entry, inspection,
and
sampling.**

127. (1.) An officer may in the daytime enter and inspect the premises of an authorized methylator or a retailer of methylated spirits, or any premises of a person authorized to receive methylated spirits, and inspect, examine, and take samples of any methylated spirits therein, paying a reasonable price for each sample.

(2.) If any person refuses to allow an officer to exercise any of these powers, he shall for each offence incur a fine of fifty pounds.

**Unlawful
supply of
methylated
spirits.**

128. (1.) If any person supplies, removes, or receives methylated spirits in contravention of this Act he shall for each offence incur a fine of fifty pounds, and the spirits with respect to which the offence is committed shall be forfeited.

(2.) If an authorized methylator supplies any methylated spirits to any person after having received notice from the proper officer that the person to

(z) 61 & 62 Vict. c. 46, s. 14.

(a) 6 Ed. VII. c. 20, s. 2.

(b) The quantity allowed by the Commissioners: 6 Ed. VII. c. 20, ss. 1, 2.

whom the spirits are supplied is not authorized to receive them, he shall pay on the spirits so supplied the duty payable on British spirits.

Sect. 128.

129. If any person—

- (a.) being an authorized methylator, has in his possession any methylated spirits in any place where he is not authorized to keep them; or
- (b.) not being an authorized methylator, has in his possession any methylated spirits not obtained from a person authorized to supply them, (c)

Unlawful possession of methylated spirits.

he shall incur a fine of one hundred pounds, and the spirits with respect to which the offence is committed shall be forfeited.

130. (1.) If any person—

- (a.) prepares or attempts to prepare any methylated spirits for use as or for a beverage or as a mixture with a beverage; or
- (b.) sells any methylated spirits, whether so prepared or not, as or for a beverage, or mixed with a beverage; or
- (c.) uses any methylated spirits or any derivative thereof in the preparation of any article capable of being used wholly or partially as a beverage, or internally as a medicine; or
- (d.) sells or has in his possession any such article in the preparation of which methylated spirits or any derivative thereof has been used, (d)

Preparation, sale, or use of methylated spirits as or for a beverage or medicine.

he shall for each offence incur a fine of one hundred pounds, and the spirits with respect to which the offence is committed shall be forfeited.

(2.) Nothing in this section shall apply to the use of methylated spirits, or any derivative thereof, in the preparation of sulphuric ether or chloroform, for use as a medicine, or in any art or manufacture, or prevent the sale or possession of any sulphuric ether or chloroform for such use. (e)

131. Where methylated spirits have been mixed with gum resin for forming any article, if any person separates the gum resin from the spirits, or alters the article in any way except by adding gum resin, or by adding a substance for the sole purpose of colouring, he shall for each offence incur a fine of two hundred pounds, and forfeit the spirits and article with respect to which the offence is committed. (f)

Offences with respect to methylated spirits mixed with gum resin.

132. The Commissioners may suspend or revoke any licence to methylate, authority, or approval granted under this part of this Act.

Power to revoke, licence, etc.

PART III

SUPPLEMENTAL

Purified Methylic Alcohol

133. (1.) Any liquid containing methylic alcohol so purified or otherwise prepared by filtration or any other process as to be free wholly or partially from any flavour or odour which would otherwise pertain to it shall be deemed to be low wines, and to have been so prepared for the purpose of distilling spirits therefrom, and shall be chargeable with duty and otherwise subject to the regulations to which spirits are subject under Part I. of this Act.

Purified methylic alcohol to be deemed low wines.

(c) Ignorance of this fact is no defence: *Lord Advocate v. Thomson*, 23 Sc. L. R. 3.

(d) Extended to methylic alcohol: 61 & 62 Vict. c. 46, s. 14; see 6 Ed. VII. c. 20, s. 2.

(e) Extended by 6 Ed. VII. c. 20, s. 2.

(f) In any mixture with gum resin the quantity of gum resin shall not be less than three ounces in every gallon of the mixture: 53 & 54 Vict. c. 8, s. 32.

Sect. 133. (2.) Provided that the Commissioners may, if they think fit, dispense with or modify those regulations with respect to any such preparation.

Sykes's Hydrometer

Strength of spirits to be ascertained by Sykes's hydrometer. 134. All spirits shall be deemed to be of the strength denoted by Sykes's hydrometer as ascertained by any officer or any officer of Customs in accordance with the table lodged with the Commissioners, and entitled a table of the strength of spirits denoted by Sykes's hydrometer.

Scales, Weights, Measures, Locks and Fastenings

Excise traders to provide scales, weights, and measures. 135. (1.) Every Excise trader must provide sufficient and just scales and weights, and a set of standard measures for the purpose of weighing, measuring, and taking an account of the spirits, goods, and commodities in his warehouse, stock, or possession, and of any casks or vessels used for the purpose of containing any such spirits, goods, or commodities.

(2.) The weights and measures must be of the prescribed denominations.

(3.) The Excise trader must maintain and keep the scales, weights, and measures in such proper and convenient place in his distillery, warehouse, or other premises as the proper officer approves, and so that the same shall be at all times ready for the use of officers.

(4.) The Excise trader must permit any officer to use the scales, weights, and measures for the purpose aforesaid, and must, with his servants and workmen, whenever required by any officer, weigh or measure, and assist him in weighing or measuring, as he requires, and in taking account of any such spirits, goods, or commodities as aforesaid.

(5.) For any refusal or neglect on the part of an Excise trader to comply with any of the foregoing provisions of this section he shall incur a fine of one hundred pounds.

(6.) If any Excise trader provides or uses or permits to be used any false, unjust, or insufficient scales or weight or measure, or practises any device or contrivance by which any officer may be prevented from, or hindered or deceived in taking the just and true quantity, weight, or measure of any spirits, goods or commodities, or of any casks or vessels, he shall incur a fine of two hundred pounds, and any such scales, weights, and measures shall be forfeited.

Locks and fastenings.

136. (1.) Where any warehouse, room, place, vessel, utensil, or fitting belonging to any Excise trader is by this Act directed to be secured or locked, the Excise trader must to the satisfaction of the proper officer, provide, affix, repair, and renew all fastenings requisite for the purpose of enabling officers to affix locks thereto, or otherwise to secure the same.

(2.) If the Excise trader fails so to do the proper officer may provide, affix, repair, or renew the fastenings, and the expense thereof shall be paid on demand by the Excise trader.

(3.) If the Excise trader fails on demand to pay the expense he shall incur a fine of one hundred pounds.

(4.) All requisite locks or keys shall be provided by the Commissioners, at the expense of the revenue.

(5.) If any Excise trader, or his servant or workman, wilfully destroys or damages any such fastening, or any lock or key belonging thereto, or any lock label, or opens or removes any lock, fastening, or lock label, or improperly

obtains access into any warehouse, room, place, vessel, utensil, or fitting, or has any fastening, vessel, utensil, or fitting so constructed that the security intended to be obtained by any lock or fastening may be defeated, the Excise trader shall incur a fine of five hundred pounds. Sect. 136.

Powers of Officers

137. (1.) An officer may, at any time, either by day or by night, enter any part of the premises of, or house or place whatsoever belonging to or made use of by, a distiller or rectifier, and search for, examine, gauge, and take an account of any still or other vessel or utensil therein, and also any spirits or materials for the manufacture of spirits therein. (g) Power of entry and examination by officers.

(2.) If an officer, after having demanded admission into the premises of a distiller or rectifier and declared his name and business at any entrance or window thereof, is not immediately admitted, the officer, and any person acting in his aid, may at any time, either by day or by night (but at night only in presence of an officer of the peace), break open any door or window of the premises, or break through any wall thereof, for the purpose of obtaining admission, and the distiller or rectifier shall incur a fine of two hundred pounds.

138. Every distiller or rectifier must, on demand by an officer, made on the premises, either by day or by night, and for the purpose of enabling him to search for, examine, gauge, or take an account of any vessel, utensil, spirits, or materials therein, provide ladders of sufficient length and strength, and place them firmly and conveniently, and supply sufficient lights and aid. Supply of ladders and lights.

If a distiller or rectifier contravenes this section, he shall for each offence incur a fine of one hundred pounds.

139. Any officer, or person acting in his aid, may, either by day or by night, for the purpose of searching for any pipe, cock, conveyance, or utensil, break up the ground in or adjoining or near the premises of a distiller or rectifier, or any wall or partition of his premises or any other place, and may, on finding any pipe or conveyance leading to or from the premises, break up or break any ground, house, wall, or other place through or into which the pipe or conveyance leads, and may break up or cut away any such pipe or conveyance, and turn any such cock, and examine whether any such pipe or conveyance conveys or conceals any spirits or any liquor used in the manufacture of spirits, so as to prevent a true account thereof from being taken. Power to search for pipes, etc.

If any damage is done in the search and such search is unsuccessful the damage shall be made good.

140. [Power to enter and search for illicit stills and spirits under warrant of a justice.] (h)

(4.) If any damage is done by such forcible entry, and the search is unsuccessful, the damage shall be made good.

(5.) An officer may seize any still, vessel, utensil, spirits, or materials unlawfully kept or deposited in any house or place without a warrant.

141. An officer may at any time enter the premises of a dealer or retailer and inspect and examine the spirits in his stock or possession, and take samples of any such spirits, paying for any sample so taken the usual price thereof. Power to enter premises of dealer or retailer and examine and take samples.

142. Every distiller, rectifier, dealer, and retailer must, when required by an officer, assist him by a sufficient number of servants in taking account of his stock, and shall for any neglect or refusal so to assist incur a fine of fifty pounds. Distillers, etc., to assist in taking account.

(g) *Stewart*, 2 *Irv.* 416.

(h) Officer in this section includes officers

of the peace: 61 & 62 *Vict. c. 46, s. 14*; count. see *ante*, p. 33.

Sect. 143. 143. (1.) An officer may require a distiller at any time when his still is not at work, to cause the water in any worm tub in his distillery to be drawn off, and the tub and worm to be cleansed.

Power to re-
quire water to
be drawn off
from worm tub.

(2.) In such case the water must be kept out of the worm tub for two hours, or until the officer has finished his examination of it, whichever first happens.

(3.) If a distiller fails to comply with any requirements under this section he shall incur a fine of two hundred pounds, and the officer may draw off the water or any portion of it, and keep it drawn off as long as he thinks necessary.

General Offences

Unlawful re-
moval of malt,
wort, or wash.

144. (1.) If any person removes any wort, wash, low wines, feints, or spirits from the premises of a distiller, contrary to the provisions of this Act, or knowingly buys or receives any wort, wash, low wines, feints, or spirits so removed from the premises of a distiller, he shall incur a fine of one hundred pounds.

(2.) In default of payment of the fine on summary conviction the offender shall be imprisoned with or without hard labour. The term of imprisonment in (i) Ireland shall be not less than two months nor more than six months.

(3.) All such wort, wash, low wines, feints, or spirits so removed shall be forfeited.

(4.) Any officer may arrest any person found committing an offence against this section. (k)

Arrest of and
penalties on
persons unlaw-
fully removing
spirits.

145. (1.) Any officer or any officer of Customs, and any officer of the peace having a commission from the Commissioners, may stop and detain any person found carrying or removing any spirits, and may examine the spirits and require the production of a permit or certificate authorizing the removal thereof.

(2.) If a permit or certificate is produced agreeing with the spirits in all respects the officer may endorse thereon the time and place of his examination thereof.

(3.) If any person is found carrying or removing any spirits exceeding the quantity of one gallon of the same denomination for the same person and does not, on request by any such officer, forthwith produce a permit or certificate authorizing the removal of the spirits, he shall incur a fine of one hundred pounds, and the spirits shall be forfeited.

(4.) The sum to which the fine may be mitigated in (i) Ireland shall not be less than ten pounds.

(5.) In default of payment of the fine on summary conviction the offender shall be imprisoned with or without hard labour. The term of imprisonment in Ireland shall be not less than one month nor more than six months.

(6.) Any officer may arrest any person found committing an offence against this section.

(j) See S. L. R. 1894.

(k) (1.) A person shall not (a.) subject any cask to any process for the purpose of extracting any spirits absorbed in the wood thereof or (b.) have on his premises any cask which has been subjected to any such process or any spirits extracted from the wood of any cask. (3.) All spirits extracted in contravention of this section shall be

deemed to be spirits unlawfully kept or deposited within the meaning of the Spirits Act, 1880, and every cask which has been subjected to any such process or which being upon premises upon which spirits so extracted are found has been subjected to any such process shall be forfeited: 61 & 62 Vict. c. 10, s. 4.

146. (1.) If any person hawks, sells, or exposes to sale any spirits otherwise than in premises for which he is licensed to sell spirits he shall incur a fine of one hundred pounds, and the spirits shall be forfeited. (1) **Sect. 146.**

(2.) The sum to which the fine may be mitigated in Ireland shall not be less than six pounds. **Unlawful hawking and sale of spirits.**

(3.) In default of payment of the fine on summary conviction the offender shall be imprisoned with or without hard labour. The term of imprisonment in Ireland shall be not less than two months nor more than three months.

(4.) Any person may arrest a person found committing (*m*) an offence against this section.

147. If any person knowingly sells or delivers, or causes to be sold or delivered, any spirits to the end that they may be unlawfully retailed or consumed or carried into consumption, he shall, in addition to any other penalty, incur a fine of one hundred pounds. (*n*) **Sale of spirits for unlawful purposes.**

148. If any person receives, buys, or procures any spirits from a person not having authority to sell or deliver the same, he shall incur a fine of one hundred pounds. **Unlawful purchase of spirits.**

149. If any person knowingly (*o*) buys or receives, or has in his possession any spirits after they have been removed from the place where they ought to have been charged with duty and before the duty payable thereon has been charged and paid or secured to be paid or the spirits have been condemned as forfeited, he shall forfeit the spirits and incur a fine equal to treble the value of the spirits. **Penalty for possession of spirits on which duty has not been paid.**

150. A person shall incur a fine of five hundred pounds if he commits any of the following offences: **Forcibly opposing execution of Act.**

(a.) Assaults an officer acting under this Act, or any person acting in his aid.

(b.) Assaults any person who has discovered or given, or is about to discover or give information or evidence against, or has seized, or is bringing to justice, any offender against this Act.

(c.) Assaults any person who has seized or is about to seize or examine any goods as forfeited under this Act.

(d.) Forcibly opposes the execution of any of the powers given.

(e.) Being armed with an offensive weapon, (*p*) or in a violent manner, rescues any offender arrested or goods seized under this Act, or prevents the arrest of any such offender or seizure of any such goods, or offers or threatens to oppose the execution of any of the powers given by this Act.

151. [Misconduct of and collusion with officers.]

154. (1.) Where any spirits or goods are forfeited under this Act they may be seized by an officer or an officer of Customs. **Provisions as to forfeiture.**

(2.) Where any spirits or materials for making spirits are forfeited under this Act, all casks or other utensils containing the same shall also be forfeited.

(3.) Where any spirits are forfeited by an Excise trader, the Commissioners may, if they think fit, take from his stock, instead of the spirits forfeited, the same quantity of any other spirits.

Savings

162. (1.) The sections of this Act which prohibit the use of a distillery within a quarter of a mile from the premises of a rectifier and the use of

(1) *Cameron v. Buchan*, 23 R. 46.

(m) See the cases cited, *ante*, p. 73.

(n) See *R. v. Prince*, L. R. 2 C. C. 154.

(o) That the defendant derived benefit

is sufficient: *R. v. Dean*, 12 M. & W. 39; on 5th April, see *ex p. Ransley*, 3 D. & L. 572; *Att.-Gen.* 1825.

v. Forge, Forr. 105.

(p) See *ante*, p. 145.

Saving with respect to premises entered

Sect. 162. rectifier's premises within a quarter of a mile of a distillery shall not apply to any premises which on the fifth day of April one thousand eight hundred and twenty-five were entered and used by a distiller or rectifier if those premises have been so entered and used continuously since, and so long as they continue to be so entered and used, provided that there is not between the premises of the distiller and those of the rectifier any communication by which wort, wash, or spirits may be removed from the one to the other except an open public street or carriage road.

(2.) Nothing in this Act shall prevent the use by a distiller or rectifier, under and in accordance with a special licence granted by the Commissioners of the Treasury, of any premises which on the fifth day of April one thousand eight hundred and twenty-five were entered and used by a distiller or rectifier, and which have continued to be so entered and used up to the commencement of this Act until the expiration or revocation of such licence.

Saving for
articles in use
before 28th
August, 1860.

163. Nothing in this Act shall prevent the Commissioners from permitting any distiller or rectifier formerly working under any Act in force before the twenty-eighth day of August one thousand eight hundred and sixty, and having worked continually since, to keep or use such of the vessels or casks then fixed or used on his premises as are, in the judgment of the Commissioners, secure and adapted to the purposes for which they are required under this Act.

SCHEDULES

FIRST SCHEDULE

RULES AS TO VESSELS AND UTENSILS

FIRST PART

VESSELS TO BE ERECTED BEFORE MAKING ENTRY BY A DISTILLER

The following vessels must be erected after the distiller's licence has been obtained, and before entry of a still is made, and must thereafter be kept during the continuance of the distiller's licence :—

a. If the still is of such kind that the produce of the wash on the first distillation is spirits and feints,—

- 1 wash charger.
- 1 feints receiver.
- 1 spirit receiver.

b. If the still is of such kind that the produce of the wash on the first distillation is low wines, then, in addition,—

- 1 low wines receiver.
- 1 low wines and feints charger.

SECOND PART

MAXIMUM NUMBER OF VESSELS IN DISTILLERY

There must not be kept in any distillery any vessel of the description herein-after mentioned in excess of the number herein-after specified in that behalf.

- 1 wash charger.
- 1 spirit receiver.

- 2 feints receivers.
- 2 low wines receivers.
- 2 low wines and feint chargers.

In connexion with each charger, one intermediate still charger.

But a distiller may keep two spirit receivers, if he affixes to each of them, to the satisfaction of the Commissioners, an apparatus for preventing the supply cock and the discharge cock being both open at the same time, and for registering the number of times each cock has been opened.

THIRD PART

CONSTRUCTION AND CONNEXION OF VESSELS IN DISTILLERY

Fermenting Back

1. There must be fixed in every fermenting back, to the satisfaction of the proper officer, a discharge cock or plug and plug-hole, through which the wash in the back may be conveyed by a main pipe or upon trough into the jack back or wash charger.

2. This pipe or trough must be so placed and fixed that all wash or liquor put therein be forthwith discharged into the jack back or wash charger, and not elsewhere.

3. There may be placed in a fermenting back a close metal pipe for conveying through the back hot or cold air or water to promote or retard the fermentation of the wort or wash, but this pipe must not open into the back.

4. Except as aforesaid, and except the pipe for conveying wort into the fermenting back from the coolers, and a sewer cock or plug for carrying off the water wherewith the back is cleansed, there must not be any pipe or conveyance entering into or passing out of the back.

Wash Charger

5. The wash charger must be of capacity not less than half that of the largest fermenting back.

6. It must be connected with the fermenting backs by one close metal pipe, with one end fixed into the pump placed in the jack back, or if a jack back is not used, into the pipe or trough communicating with the fermenting backs, and the other end into the wash charger.

7. It must be connected with the wash stills by one close metal pipe, with a branch to each still, or to the intermediate still chargers.

8. It may be connected with the feints receiver by means of a close pump or metal pipe.

9. There must be a cock on each of these connecting pipes.

Low Wines Receiver

10. A low wines receiver must be connected with the safe at the end of the worm of the wash still by one close metal pipe, attached to and leading directly from the safe in such manner that all low wines running from the safe into the pipe shall immediately be discharged into the receiver, and must have fixed in it a pump or discharge cock for the conveyance of low wines into the low wines and feints charger.

Feints Receiver

11. A feints receiver must be connected with the safe at the end of the worm of the still by one close metal pipe attached to and leading directly from the safe,

in such manner that all feints running from the safe into the pipe shall immediately be discharged into the receiver, and must have fixed in it a pump or discharge cock for the conveyance of feints into the low wines and feints charger, or wash charger, or intermediate still charger.

Low Wines and Feints Charger

12. A low wines and feints charger must be connected with the still by a close metal pipe with a cock thereon, one end of the pipe being fixed into the bottom of the charger, and the other attached to the pump or to the still, and the charger must be connected with the low wines receiver and feints receiver by close metal pipes, whereof one end must be fixed into the charger, and the other end attached to the pump or discharge cock fixed in each receiver.

Spirit Receiver

13. A spirit receiver must be connected with the safe at the end of the worm of the still by one close metal pipe attached to and leading directly from the safe in such manner that all spirits running from the safe into the pipe shall immediately be discharged into the receiver.

14. There must be fixed in it either a pump or a proper discharge cock for drawing off the spirits from it, and conveying the same through one close metal pipe into the entered cask or vat in the spirit store.

Spent Lees Receiver

15. A spent lees receiver must be connected with the low wines still by one close metal pipe with a cock thereon fixed into the receiver, and attached to and leading directly from the discharge cock of the still. In the bottom of the receiver there must be a discharge hole with a secure internal plug. At not more than one-third of its depth from the top there must be an opening covered and secured by a metal plate perforated with holes of not more than four-tenths of an inch in diameter.

Intermediate Still Charger

16. An intermediate still charger must have one fixed pipe with a cock thereon leading from the wash charger or low wines and feints charger, one fixed discharge pipe with a cock thereon leading to the still, and may have one pipe with a cock thereon leading from the feints receiver, and one pipe leading from the water cistern.

Store Casks or Vats

17. Every store cask or vat must be a close covered vessel, and must be secured with fastenings to the satisfaction of the proper officer.

General

18. Every wash charger, low wines receiver, feints receiver, low wines and feints charger, spirit receiver, spent lees receiver, and intermediate still charger, must be a close covered vessel, and except as above specified, must not have any opening, or communication with any other vessel or utensil.

FOURTH PART

CONSTRUCTION AND FITTINGS OF STILL

1. In every still there must be an opening to enable an officer to take gauges and samples. This opening must be not less than two inches in diameter, and

8. Every cock and valve kept or used by the distiller must be constructed in the prescribed or approved manner.

SEVENTH PART

DIPPING HOLES

1. At or near the top of every entered cask or vat for storing or keeping spirits on the premises of a distiller, there must be a dipping hole at which an officer may conveniently take his dip or gauge of the contents of the vessel.

2. A metal plate must be fixed at the dipping hole to secure it from being worn or altered.

3. Every charger and receiver must have a sufficient cover with a dipping hole cut in it of the prescribed form and size.

4. If the Commissioners so direct, there must be two or more dipping holes in the cover of any spirit receiver or store cask or vat used in a distillery, at such places in the cover as they direct.

5. Each dipping hole in a spirit receiver, low wines or feints receiver or charger, store cask, or vat, must be secured and kept secured to the satisfaction of the officer.

6. No alteration must be made in the dipping hole or level of any vessel or utensil.

EIGHTH PART

PROVISION AND SITUATION OF ARTICLES REQUIRED OR ALLOWED

1. Every distiller must, at his own expense, and to the satisfaction of the Commissioners, provide, place, affix, and maintain each utensil and fitting allowed or required by this Act.

2. Every distiller must, to the satisfaction of the Commissioners, place and keep each vessel and utensil on his premises in a convenient situation, and so as to be easy of access to the officer.

NINTH PART

CASKS

Every distiller must legibly cut, brand, or paint with oil colour on the outside of both the ends of every moveable cask used in his premises for keeping or delivering spirits, and keep so cut, branded, or painted, his name, the name of the place where his stock is kept, and the number of gallons which the cask is capable of containing, and, if that number is less than eighty, the quarter or quarters of a gallon of capacity above the number of entire gallons.

TENTH PART

MARKING UTENSILS AND ROOMS

1. Every distiller must cause to be legibly painted with oil colour, and must keep so painted, on some conspicuous part of every vessel or utensil intended to be used by him in his business, and of the outside of the door of every room and place wherein any part of his business is to be carried on or any spirits are to be kept, the name of the vessel, utensil, room, or place according to the purpose for which it is intended.

2. Where more than one vessel, utensil, room, or place is used for the same purpose all such vessels, utensils, rooms, or places must be marked by progressive numbers.

ELEVENTH PART

COURSE OF WASH, LOW WINES, FEINTS, AND SPIRITS

1. All wash must be fermented in the fermenting backs, and thence conveyed directly into the wash charger, and thence into the still for distillation.
2. All low wines, feints, and spirits running from the worm of the still must run thence directly into the safe at the end of the worm.
3. All low wines must be conveyed directly from the safe into the low wines receiver, and thence directly into the low wines and feints charger, and thence directly into the low wines still for re-distillation.
4. All spirits must be conveyed directly from the safe into the feints receiver or spirit receiver.
5. All spirits conveyed into the feints receiver must be conveyed thence directly into the low wines and feints charger or wash charger or intermediate still charger, and thence directly into the still for re-distillation.
6. No spirits conveyed into the spirit receiver may be re-distilled or may be removed therefrom except into the distiller's spirit store.
7. All spirits distilled in the distillery must, after the officer has taken an account of their quantity and strength, be forthwith conveyed through a close metal pipe from the spirit receiver into the store cask or vat in the spirit store.
8. Except after notice to, or in the presence of, an officer, access may not be had to the end of the worm of any still, or to any low wines, feints, or spirits, from the time of the extraction or distillation thereof in the still until they are taken account of by the officer in the proper receiver, or to any spirits in a store cask or vat.

THIRD SCHEDULE

RULES WITH RESPECT TO RECTIFIERS

FIRST PART

1. A rectifier may not have any opening, fixed pipe, or conveyance leading to or from a still used by him, except one charging pipe leading to the still, and the discharge cock and the head of the still terminating in the worm.
2. A rectifier must permit the charge and discharge cock of every still used by him to be secured by the officer, and kept so secured whilst the still is at work.

SECOND PART

1. The discharge cock of every still used by a rectifier must be so placed that the officer may have convenient access thereto, and for this purpose must be continued in a straight line from the body of the still, and must not project more than three feet therefrom.
2. A rectifier must, before beginning to draw off spirits from a still, charge the still with a quantity of liquor, in the proportion of not less than seven parts in ten of the whole quantity which the still, including the head, is capable of containing, and must keep the still so charged until he begins to draw off spirits therefrom.
3. Every still must be worked off within sixteen hours from the time of the officer's taking the gauge thereof.
4. A rectifier must, as soon as his still has been worked off, remove the head therefrom, unless it is permanently fixed to the body of the still, and the head

so removed must not be replaced until the still is again charged and ready to be worked.

5. A rectifier must not allow his still to be worked until the officer has examined the quality of the spirits therein.

THIRD PART

1. When a rectifier desires to have the furnace door or steam pipe of a still unlocked, he must give the officer not less than twelve hours' previous written notice, specifying the still, and the day and hour when he wishes to have the door or pipe unlocked.

2. The officer shall attend at the time so specified, or within one hour thereafter.

3. The officer must not open the door or pipe until the still has been fully charged, and until he has examined its contents and seen the head of the still put on and ready to be locked down.

4. The officer shall not be bound to remain for this purpose more than one hour at any one time, and if within one hour after his arrival the still is not charged, and its head ready to be locked down, another notice shall be requisite.

5. Whenever any vessel, utensil, cock, pipe, pump, or other article on the premises of a rectifier which is required by law to be locked and secured has to be opened for the purpose of any cleaning, repair, or improvement, the officer shall, on receiving a written request for that purpose, open the same, and keep it open whilst the work is in progress. He must close every such vessel or article every evening as soon as the work is finished for the day, but must attend to open it at six o'clock every morning until the work is completed.

FOURTH PART

Where the strength of any spirits forming part of the stock of a rectifier, by reason of their being compounded with other substances, cannot be ascertained by Sykes's hydrometer, he must, on request by an officer, cause the true quantity and strength of the spirits to be legibly marked on the outside of the cask or vessel containing the same, and to be kept so marked until the spirits are removed therefrom.

FOURTH SCHEDULE

Particulars to be specified in Request Note for Permit

Quantity and strength of spirits for which the permit is required.
Casks or other vessels in which the spirits are contained.
From whom and whence the spirits are to be sent.
To whom and whither the spirits are to be sent.
Mode of conveyance.

Particulars to be specified in Certificate

Quantity, denomination, and strength of spirits sent out or delivered.
Number of casks or packages in which the spirits are contained.
Day and hour of sending out or delivery.
From whom and whence sent or delivered.
To whom and whither sent or delivered.
Mode of conveyance.

Particulars to be entered in Stock Book

On Receipt:—

Quantity, denomination, strength and gallons computed at proof of spirits received.

Date of receipt.

From whom and whence received.

On sending out or delivery:—

Quantity, denomination, strength and gallons computed at proof of spirits sent or delivered.

Date of sending out or delivery.

To whom or whither sent or delivered.

As to Scotland, 3 George IV. (the Illicit Distillation (S.) Act 1822), c. 52 is applicable also—

109. If it shall be made appear to the satisfaction of the commissioners of excise in Scotland, that any useful processes or experiments in chemistry in any part of Scotland shall require a still or stills of greater content or capacity than that of fifty gallons English wine measure as aforesaid, (7) it shall and may be lawful to and for the said commissioners of excise to grant or authorize and direct a licence to be granted to the owner or owners of such chemical work or works, to use for the purposes aforesaid a still or stills of larger content or capacity than as aforesaid; and it shall and may be lawful for any officer or officers of excise, at all hours in the day-time, to visit such work or works and such still or stills belonging to any person or persons licensed under the authority of this Act, and to examine by all proper means the liquor or matter coming from the said still or stills, but not to open the said still or stills, unless the said officer or officers shall not otherwise be allowed to examine the liquor or matter coming from the said still or stills; and if any such still or stills shall at any time be used or employed for the purpose of distilling wort, wash, low wines, or spirits, contrary to the true intent and meaning of this Act, such still or stills and all utensils belonging thereto shall be forfeited, and shall and may be seized by any officer or officers of excise, and the owners and users thereof shall be subject and liable to all the pains and penalties made and provided by this Act against persons working with unlicensed stills.

Licences for stills of greater capacity than 50 gallons may be granted to carry on chemical experiments, etc.

110. (r) Before any person in Scotland shall make any still, such person shall permit and allow any officer or officers of excise, at all hours in the day-time, to enter any workhouse, shop, or other place made use of by such person for making or keeping stills, and to inspect and examine the same; and all stills which shall be used by any person or persons, shall be made of copper only, and not of any other metal; and every such maker or makers of stills shall stamp his, her, or their name or names, and the progressive number, and the content or capacity of every still made by him, her, or them, upon the shoulder of every such still; and in order that the content of the said still or stills may be distinctly ascertained, the said maker or makers shall, and he, she, and they is and are hereby required, within three days after finishing any still, to give notice to the proper supervisor or officer of the district or division where such still hath been so made, that the same is ready to be gauged and stamped; and such supervisor or officer is hereby required, within three days after such notification, to gauge such still, and to grant a certificate, specifying the progressive number, content, and maker's name of such still; and in case any such maker

Still makers to allow officers to examine their work-shops, etc.; and to give notice to the officers of excise, that stills may be gauged and stamped, on penalty of £50

(7) Rendered illegal by the previous section. (r) See Statute Law Revision Act, 1873.

Sect. 110.

Persons importing stills into Scotland shall give notice to the officers, who shall gauge and stamp the same.

Stills found in the custody of any person, without having been gauged and marked, shall be forfeited, with penalty of £200.

Officers of excise may search for and seize private stills, etc., without a warrant from justices, and proprietors, etc., shall be subject to the same penalties as if the officers had such warrant.

Persons not being entered distillers, brewers, or vinegar makers, having wash exceeding 26 gallons, or any quantity of low wines or feints in their possession, to forfeit £100, etc.

Any person found aiding and assisting in

or makers shall make any still of any metal other than copper, or shall neglect to give such notice to the supervisor or officer as aforesaid, or shall in any respect offend in any of the particulars aforesaid, such maker or makers shall for each and every such offence forfeit and lose the sum of fifty pounds.

111. If any person or persons shall import or bring any still or stills into Scotland from England or Ireland or from foreign parts, such person or persons shall, within three days after the arrival of such still or stills, give notice of the same and of the place where the same is deposited, to the proper supervisor or officer of the district or division; and such supervisor or officer shall, within three days after the receipt of such notice, gauge and cause to be stamped the said still or stills, in the same manner as herein-before directed in the case of a still or stills being made in Scotland; and if any person, who shall so import or bring any still or stills into Scotland, shall neglect or omit to give such notice thereof as aforesaid, such person shall forfeit and lose the sum of fifty pounds for every still so imported or brought.

112. In case any still or stills shall be erected and made use of, or be found in the custody or possession of any person or persons in Scotland, without having been previously gauged by the proper officer of excise and marked in the manner herein-before mentioned, every such still shall be forfeited, and shall and may be seized by any officer or officers of excise, and the owner and owners thereof shall also forfeit and pay the sum of two hundred pounds, over and besides all other penalties and forfeitures imposed by this Act for the unlawful using the same.

113. [Justice may grant a special warrant to break open suspected place and to seize still, etc.]

114. Nothing herein contained shall extend, or be deemed or construed to extend, to make it unlawful for any officer or officers of excise to search for and discover any private or concealed still, back, or other vessel, for the making, preparing, or keeping of wort, wash, low wines, or spirits, or other materials preparing or prepared for distillation in any part of Scotland, without such warrant as aforesaid, or from seizing every such still, back, or other vessel, and all such low wines, spirits, wort, wash, and other materials preparing or prepared for distillation, which he or they shall so find and discover, or to do therewith in the same manner as aforesaid; and every such person with whom the same shall be found, or who shall obstruct any such officer or officers, or shall otherwise offend in any of the particulars aforesaid, shall be subject and liable to the same penalties and forfeitures as if such officer or officers had been authorized by such warrant as aforesaid; anything herein-before contained to the contrary in anywise notwithstanding.

115. All and every person and persons in Scotland, not being a licensed distiller, brewer, or vinegar maker, in whose possession any quantity of wort or wash, fermenting or fermented, exceeding the quantity of twenty gallons, or any quantity whatever of low wines or feints shall be found, shall severally forfeit and lose the sum of one hundred pounds, and all such wort or wash, low wines or feints, together with the casks or vessels containing the same, shall and may be seized by any officer or officers of excise; . . .

116. When any officer or officers of excise in Scotland shall at any time discover and find any private or concealed still, back, or vessel for the making, preparing, or keeping of wash, low wines, or spirits, or other materials preparing or prepared for distillation, and shall at the same time discover in the room or place, where such private still, back, or other vessel shall be so found, any person or persons knowingly aiding, assisting, or anywise concerned in carrying on such private distillation, every such person and persons so discovered shall

(over and above all other penalties and forfeitures to which the proprietor or person, in whose custody or possession the same shall be found, is subject and liable) forfeit and lose the sum of thirty pounds each, for and in respect of every such offence; and it shall and may be lawful for the officer and officers of excise and all other persons acting in their aid and assistance to stop, arrest, and detain all and every the person and persons so discovered in such room or place, and to convey the said person and persons before one or more justice or justices of the peace of the county, city, or place respectively, wherein any such person or persons shall be so discovered as aforesaid; . . .

Sect. 116.

any private distillery shall forfeit £30; and may be carried before a justice for conviction.

118. When any officer or officers of excise shall find or discover any unlawful distillery in any part of Scotland, it shall and may be lawful to and for such officer or officers, at his or their discretion, immediately upon the discovery of such private or unlawful distillery and the seizure of any spirits or materials, implements or utensils for distillation, effectually to spill, break up, and destroy the same, any thing herein-before contained to the contrary in anywise notwithstanding.

Officers may spill and destroy all spirits, materials, and utensils found at unlawful distilleries.

119. If any distiller or dealer in spirits or other person in Scotland, licensed or not licensed, shall sell or send out or shall knowingly suffer to be sent out of his or her stock, custody, or possession, or shall receive or knowingly suffer to be received into his or her stock, custody, or possession, or shall suffer any other person, for his or her use or account, to receive at one time any quantity of British spirits exceeding the quantity of two gallons, without the same being accompanied with a true and lawful permit; or if any carrier, boatman, or other person in Scotland shall knowingly carry, remove, or transport, or by means of his horse, cart, vessel, boat, or other conveyance shall knowingly suffer to be carried, removed, or transported, or shall be aiding or assisting in carrying, removing, or transporting from any part of Scotland to another part thereof, any quantity of British spirits at one time exceeding the quantity of two gallons, without being accompanied with a true and lawful permit; every such distiller, dealer, carrier, boatman, or other person whatsoever shall, for each and every such offence, forfeit and lose the sum of two hundred pounds, over and above every other penalty and forfeiture to which he or she is or may be liable by virtue of this Act.

No distiller, etc., in Scotland shall send out or receive any British spirits exceeding the quantity of two gallons, nor shall any person carry the same without a permit, on pain of forfeiting £200.

As to Ireland, the following statutes are also applicable:—

1 & 2 William IV. c. 55 (The Illicit Distillation (I.) Act, 1831)

11. Every person who shall make any still shall permit any officer of excise, at any hours in the day-time, to enter any place made use of by such person for making or keeping stills, and to examine the same; and every such maker of stills shall stamp his name, and the content or capacity of every still made by him, upon the shoulder of every such still; and every maker of stills shall, within three days after finishing any still of less content than two hundred gallons, give notice to the proper supervisor or officer of the district or division where such still hath been so made, that the same is ready to be gauged and stamped; and such supervisor or officer shall, within three days after such notification, gauge such still, and stamp the same, and grant a certificate specifying the content and maker's name of such still; and every maker of a still who shall in any respect offend in or neglect any of the particulars aforesaid shall for every such offence forfeit sixty pounds, . . .

Regulations as to still makers.

Stills of less content than 200 gallons to be gauged and stamped.

Sect. 12.

Persons importing stills of less content than 200 gallons into Ireland to give notice to the officers, under penalty of £60.

Stills under 200 gallons found not gauged and marked to be forfeited, together with £60.

No still shall be conveyed without a permit, under pain of forfeiture of still and £100.

On arrival of still permit shall be delivered up to officer, and a certificate shall be given by him.

Persons other than licensed distillers, brewers, or vinegar makers, brewing or keeping worts, wash, or low wines, or keeping stills, etc., to forfeit £100 and all the worts, etc.

12. Every person who shall import any still into Ireland of less content than two hundred gallons shall, within three days after the arrival of such still, give notice of the same, and of the place where the same is deposited, to the proper supervisor or officer of the district or division; and such supervisor or officer shall, within three days after the receipt of such notice, gauge and cause to be stamped such still in the same manner as herein-before directed; and every person who shall so import any such still into Ireland, and shall omit to give such notice thereof as aforesaid, shall forfeit sixty pounds, . . . for every still so imported.

13. Every still of less than two hundred gallons content which shall be found in the possession of any person or persons in Ireland, without having been previously gauged by the proper officer of excise, and marked in the manner herein-before mentioned, shall be forfeited, and may be seized by any officer of excise; and the owner or person in whose possession the same shall be found shall also forfeit sixty pounds, . . . over and besides all other penalties and forfeitures imposed for the unlawful using the same.

14. No brazier or manufacturer of metal, or other person, shall send or convey any still, still head, or worm to any person, or from any one part of Ireland to any other part thereof, unless a permit granted by an officer of excise for the removal of such still, still head, or worm shall have been obtained by such brazier, manufacturer, or other person; and such permit shall contain in the body thereof the name of the brazier or manufacturer thereof, or other person sending the same, and of the person or persons to whom and the place to which such still, still head, or worm is intended to be sent, and also the content in gallons of such still and of the head thereof respectively; and every such still, still head, or worm which shall be found conveying or conveyed, and for the conveyance of which such permit shall not be produced, shall be forfeited, and may be seized by any officer of excise; and the brazier, manufacturer, or other person sending or conveying the same shall forfeit one hundred pounds, . . .

15. The person to whom any such still shall be conveyed shall, within forty-eight hours after the arrival of such still, deliver up the permit under which such still shall have been conveyed to the proper officer of the division or ride in which such person shall reside; and such officer shall thereupon grant a certificate to such person in lieu of such permit; and if any such still shall be found in the possession of any person, after the expiration of forty-eight hours from the arrival thereof, without such certificate, such still shall be forfeited, and may be seized by any officer of excise.

16. Every person, other than a licensed distiller, brewer, or maker of vinegar, who shall brew or make, or shall have in his possession, any worts, wash, or pot ale, (except for the purpose of being made into beer for the private use of such person, the proof whereof shall lie on such person,) and every person, other than a licensed distiller, who shall distil or have in his possession any low wines or singlings, and every person, not being duly licensed to keep or use a still, who shall have or keep any still, still head, or worm of a still, and every person who shall without being lawfully authorized thereto have in his possession, or in any dwelling house, or in any outbuilding, place, or premises occupied by him, any worts, wash, or pot ale, (except as aforesaid,) or any low wines or singlings, or any still, still head, or worm of a still, whether such wort, wash, or pot ale, or low wines or singlings, or still head or worm, shall or shall not be the property of such person, shall forfeit one hundred pounds, . . . and all such worts, wash, or pot ale, low wines, and singlings, stills, still heads, and worms, shall be forfeited, and may be seized by any officer of excise.

17. [Justice may grant a special warrant to break open suspected place, and seize the stills, worts, etc.] (s) **Sect. 17.**

18. Nothing in this Act contained shall be construed to make it unlawful for any officer of excise to search for any private or concealed still, back, or other vessel for the making, preparing, or keeping of wort, wash, low wines or spirits, (t) or other materials preparing or prepared for distillation, without such warrant as aforesaid, or from seizing every such still, back, or other vessel, and all such low wines, spirits, wort, wash, and other materials preparing or prepared for distillation, which he or they shall so find, or to proceed in relation thereto in manner aforesaid; and every person with whom the same shall be found, or who shall obstruct any such officer, or any person acting in his aid, or shall otherwise offend in any of the particulars aforesaid, shall be subject and liable to the same penalties and forfeitures as if such officer had been acting under such warrant as aforesaid, any thing herein-before contained to the contrary notwithstanding; and if any officer of excise, having entered any house without a warrant, shall break open any door or lock, or forcibly enter any room or place, in search of any concealed still, back, vat, cooler, or other vessel, or any spirits, low wines, wort, or wash, or other materials preparing or prepared for illicit distillation, and shall find any such private or concealed still, still head, or worm of a still, or any back, vat, cooler, or other vessel, or any spirits or low wines, or wort or wash or other materials, such finding shall be a full justification of such breaking or forcible entry, and on proof thereof in any suit or action to be brought against any officer, or any person acting in his aid, for the same, a verdict shall be given for the defendant. (u)

Officers of excise may search for and seize private stills, etc., without a warrant from a justice;

and proprietors and persons obstructing shall be subject to the same penalties as if the officers had a special warrant.

Finding of illicit articles to be a justification of forcible entry.

19. When any officer of excise shall discover any private or concealed still, or any back or vessel for making or preparing or keeping any wort, wash, pot ale, low wines, or singlings, or other materials preparing or prepared for private distillation, the process of distilling or of making or preparing worts, wash, pot ale, low wines, or singlings or spirits, being then proceeding, and shall at the same time find any person in the room or place where such private distillation of spirits, or making or preparing of worts, wash, or pot ale, low wines or singlings, is carrying on, every such person so discovered, over and above all other penalties and forfeitures to which the proprietor or person in whose possession the same shall be found is subject and liable, shall severally forfeit one hundred pounds each, . . . and it shall be lawful for the officer of excise to arrest and detain every person so discovered, and to convey him before one or more justice or justices of the peace of the county, city, or place respectively near to the room or place where such person shall be so discovered, to be dealt with in manner herein-after directed. (x)

Persons found where illegal distillation is in process shall forfeit £100, and may be arrested and taken before a justice.

20. When any officer of excise shall find any unlawful distillery, it shall be lawful for such officer, immediately upon the discovery of such private or unlawful distillery, and the seizure of any spirits, or materials, implements, or utensils for distillation, effectually to scatter, spill, break up, and destroy the same; any thing herein-before contained to the contrary in anywise notwithstanding.

Officers may spill and destroy all spirits, materials, and utensils found at unlawful distilleries.

(s) Ss. 17-19 extended to officers of customs: 24 & 25 Vict. c. 91, s. 22. See *Doherty v. McClelland*, 28 L. R. Ir. 168. Ss. 17-21 are repealed as to malt, or corn or grain making into malt: 43 & 44 Vict. c. 20, s. 49.

(t) Includes all spirits whatsoever whether completely distilled or otherwise: 31 & 32 Vict. c. 124, s. 6.

(u) Officers of constabulary may exercise all the powers and have all the privileges of officers of excise in relation to any offence committed or suspected to be committed against this Act: 20 & 21 Vict. c. 40, s. 5.

(x) An arrest at or near on fresh pursuit is sufficient: *R. v. Mullins*, 9 Ir. L. R. 33; *R. v. Moran*, *ib.* 35.

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Any justice of peace, landlord, or his bailiff, may seize stills, etc.

21. It shall be lawful for any justice of peace who shall find any still, still head, or worm of a still in possession of any person, without a sufficient licence being produced for keeping the same, and for any landlord or proprietor of any land or premises on which the same shall be found, or his steward or bailiff, to seize such still, still head, or worm, and to convey and deliver the same to the next officer of excise, who shall take such still, still head, or worm into his custody, and secure the same, in like manner as if such still, still head, or worm had been seized by him; and it shall in like manner be lawful for any justice of the peace, landlord, or proprietor, or steward or bailiff, to seize any low wines, singlings, wort, wash, pot ale, in the possession of any person not entitled by law to have the same in possession, and to spill and destroy all such low wines, singlings, wort, wash, pot ale.

Persons removing or carrying stills or spirits may be stopped by officer, and if they have no permit, or if spirits are illicitly distilled, shall forfeit £100, together with stills and spirits, and may be arrested and taken before a justice.

25. It shall be lawful for any officer of excise to stop and detain any person who shall be found removing or carrying any still, still head, or worm, or any spirits of any kind whatever, and to examine such still, still head, or worm, or such spirits, and to ascertain whether such still is duly marked, and to ascertain the quantity, quality, sort, or kind, and the strength of such spirits, and to demand the production of the permit or permits accompanying such still, still head, or worm, or such spirits, if such spirits shall amount to a quantity for which a permit is by law required; and every person so found removing any still, still head, or worm, or any spirits which are by law required to be accompanied by a permit, who shall refuse to produce such permit or permits as aforesaid, on being required so to do by any officer of excise, or shall be found removing or carrying any still, still head, or worm, or such spirits, without a lawful permit, or shall be found removing or carrying, in any quantity whatsoever, any spirits which shall have been illegally distilled, or the duties whereon shall not have been paid, or any keg, cask, or vessel which shall have contained illicit spirits, shall for every such offence severally forfeit one hundred pounds each, . . . and the still, still head, or worm, or the spirits, so carrying and removing, together with the casks or vessels containing the same, or the casks, kegs, or vessels which shall have contained illicit spirits, shall be forfeited, and may be seized by any officer of excise; and every such officer is hereby authorized and required to stop, arrest, and detain every such person, and to convey him, together with the still, still head, or worm, or spirits, or keg, so found removing or carrying, before one or more of his Majesty's justices of the peace residing near to the place where any such person shall be so stopped or arrested, to be dealt with as herein-after is directed.

Bags, casks, etc., containing spirits liable to forfeiture, and carriages, etc., employed for unlawful removal, to be forfeited.

26. All bags, casks, bottles, jars, utensils, or vessels, in which any (y) spirits, worts, wash, pot ale, low wines, singlings, or other liquors, liable to forfeiture under this Act, shall be contained, and all carriages, carts, cars, and all horses and other cattle, and all boats, made use of in the removal or conveyance, or having been used in the removal or conveyance, of any liquors, or any still, still head, or worm, or other goods, liable to forfeiture under this Act, shall be forfeited, and may be seized by any officer of excise.

Penalty on persons making signals or giving notice to persons engaged in illicit distilling, etc., of the approach of excise officers.

30. Every person who shall make or cause to be made, or aid or assist in making, any signal to any person engaged in (y) distilling, or carrying or conveying or having in possession any still, still head, or worm, or any worts, wash, pot ale, low wines, singlings, or spirits, or any cask, keg, or vessel, or give any warning to any such person so engaged as aforesaid, of the approach of any officer of excise, or of any person acting in his or their aid, shall for every offence forfeit ten pounds, . . . and any officer of excise or any other person may stop,

(y) Repealed as to malt, 43 & 44 Vict. c. 20, s. 49.

arrest, and detain any person who shall so make or aid or assist in making such signal, or so giving warning, and convey such person before one or more of his Majesty's justices of the peace residing near to the place where any such person shall be so stopped, arrested, and detained, to be dealt with as herein-after is directed.

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37. If any person liable to be arrested and detained under the provisions of this Act shall not be detained at the time of committing the offence for which he is so liable, or after detention shall make his escape, any officer of excise may stop, arrest, and detain such person at any time afterwards, and carry him before any justice or justices of the peace, to be dealt with as if detained at the time of committing the offence.

Persons liable to arrest, not being detained at the time, may be afterwards arrested.

46. All seizures made of any goods, commodities, chattels, or things forfeited under the provisions of this Act, and not claimed within the space of fourteen days after seizure, by application in writing either to the collector or supervisor of excise, or to the officer seizing, or in whose custody the goods, commodities, chattels, or things seized shall be, shall be absolutely forfeited, . . .

Seizures if not claimed within 14 days to be forfeited.

47. All malt, corn, or grain, and all spirits, which shall be seized under the provisions of this Act, which shall become forfeited for want of claim, or which being claimed shall, on proceedings had for the condemnation thereof, be adjudged forfeited, shall be sold and disposed of, either publicly to the best bidder or by private sale, at such time, at such place, and in such manner, as the commissioners of excise shall direct; and all and every still, still head, and worm, and all casks, kegs, and vessels, which shall be seized and become forfeited as aforesaid, shall be cut up and broken to pieces, and the materials thereof sold and disposed of in like manner, by order of the commissioners of excise; and all boats, horses, carriages, and other goods, commodities, and chattels, so seized and become forfeited, shall in like manner be sold and disposed of as the commissioners of excise shall direct; and all worts, wash, low wines, and singlings, so seized, shall be wholly and effectually spilled and destroyed; . . .

Sale or destruction of seizures.

51. All and every person committing any offence against the provisions of this Act, by illegally (a) distilling, selling, or keeping spirits, or removing spirits, shall also be subject and liable to all penalties imposed by any other Act or Acts in force relating to spirits, and to permits, in the same manner as if such person or persons were duly licensed as distillers, rectifiers, or compounders, dealers in, or retailers of spirits; . . .

Illicit distillers, etc., to be subject also to penalties under other Acts.

17 & 18 Vict. c. 89 (The Spirits (I.) Act, 1854)

6. As to spirits *in transitu* or process of removal from one place to another it shall and may be lawful for any county inspector sub-inspector head or other constable of constabulary to demand from any person having in his custody or possession any spirits in any quantity whatsoever exceeding one gallon a proper permit or certificate authorizing the removal of such spirits and on the production of such permit or certificate to endorse the same with his own name together with the place date and time of such endorsement; and in case no permit or certificate shall be produced or any permit the limitation of which shall have expired it shall be lawful for such . . . constable to seize such spirits together with the vessels containing the same and the horses or cattle and cart or other carriage used in the removal thereof and to arrest the person in whose

Spirits in transitu.

Constable may demand permit.

Seizure of spirits.

(a) Rep. as to malt, 43 & 44 Vict. c. 20, s. 49.

Sect. 6. possession or custody the same shall have been found and to convey him as soon as conveniently may be before a justice of the peace.

Arrest of offender.

As to Wine, by 23 & 24 Vict. c. 27 (The Refreshment Houses Act, 1860)—

Entry by wine retailer,

Wines in un-
entered place
forfeited.

Officers may
enter pre-
mises.

And search.

Forfeiture.

23. Every person licensed to retail wine under this Act shall in manner directed by the laws of excise in that behalf make entry with the proper officer of excise of every house cellar room or place for storing keeping or retailing of wine on pain of forfeiting the penalties imposed by the statutes in that behalf for making use of any unentered room or place and all wine found in any such unentered house cellar room or place shall be forfeited.

24. It shall be lawful for any officer of excise during the hours in which any house licensed for the retail of wines to be consumed on the premises may be kept open to enter into every house cellar room or place entered for the storing keeping or retailing of wine to be consumed as aforesaid and to make search for and seize all spirits which may be found in any such house cellar room or place and to examine all wine kept therein.

25. If any person licensed to retail wine under this Act shall receive into or keep or have in his possession in any cellar room or place entered for storing keeping or retailing wine any spirits he shall in addition to all other penalties forfeit the sum of £50 . . . and all spirits found in any such entered cellar room or place shall be forfeited.

23 & 24 Vict. c. 107 (The Refreshment Houses (I.) Act, 1860)

Constables and
police officers
empowered to
visit licensed
refreshment
houses.

Licensed re-
tailers of wine
to make entry
of houses, etc.,
with the
proper officer
of Excise.

Excise officers,
etc., em-
powered to
enter the
premises of
licensed re-
tailers of wine,
etc.

17 & 18 Vict.
c. 89, s. 12.

20. It shall be lawful for any inspector or superintendent or serjeant of police, or for any county inspector, sub-inspector, head or other constable, when and so often as he or they shall respectively think proper, to enter at any time between the hours of nine at night and seven in the morning into all houses licensed as refreshment houses under the authority of this Act, and into and upon the premises belonging thereto; (b)

25. Every person licensed to retail wine under this Act shall, in manner directed by the laws of Excise in that behalf, make entry with the proper officer of Excise of every house, cellar, room, and place for storing, keeping, or retailing of wine, on pain of forfeiting the penalties imposed by the statutes in that behalf for making use of any unentered room or place; and all wine found in any such unentered house, cellar, room, or place shall be forfeited.

26. It shall be lawful for any officer of Excise, or for any inspector of constabulary, superintendent of police, head or other constable, during the hours in which any house licensed for the retail of wine to be consumed on the premises may be kept open, to enter into every house, cellar, room, or place used for the storing, keeping, or retailing of wine to be consumed as aforesaid, and to make search for and seize all spirits which may be found in any such house, cellar, room, and place, and to examine all wine kept therein; and all powers granted to such officer of Excise, inspector, superintendent of police, head or other constable, by an Act of the seventeenth and eighteenth years of the reign of Her Majesty, chapter eighty-nine, section

(b) By s. 6. All houses rooms shops or buildings kept open for public refreshment resort and entertainment at any time between the hours of 9 p.m. and 7 a.m.

not being licensed for the sale of beer cider wine or spirits respectively shall be deemed refreshment houses within this Act.

twelve, shall and may be exercised with respect to houses licensed for the retail of wine under this Act. (c)

Sect. 26.

27. If any person licensed to retail wine under this Act shall receive into or keep or have in his possession, in any cellar, room, or place used for storing, keeping, or retailing wine, any spirits, he shall, in addition to all other penalties, forfeit the sum of fifty pounds, which shall be denominated an Excise penalty; and all spirits found in any such cellar, room, or place shall be forfeited.

Penalty on persons licensed to retail wine having spirits on their premises.

28. Every person licensed under this Act to sell wine by retail shall, if required, sell or otherwise dispose of all such wine (except wine in bottle and quantities less than half a pint) by the gallon, quart, pint, or half pint measure sized or marked according to the standard, and shall also, if required by any guest or customer purchasing such wine, retail the same in a vessel sized or marked according to such standard; and in default thereof he shall for every such offence forfeit the illegal measure.

Standard measures to be used in the sale of wine

As to Beer, by 43 & 44 Vict. c. 20 (The Inland Revenue Act, 1880)—

2. In this Act each of the following terms shall have the meaning assigned to it by this section, unless it is otherwise expressly provided, or there is something in the subject or context inconsistent therewith :

Interpretation of terms.

"Person" includes a body of persons, whether corporate or unincorporate.

"Malt trader" means and includes a maltster or maker of malt, a dealer in malt, a roaster of malt, a brewer of beer for sale, and a vinegar maker.

"Beer" includes ale, porter, spruce beer, and black beer, and any other description of beer; and extends to any liquor which is made or sold as a description of beer or as a substitute for beer, and which on analysis of a sample thereof at any time shall be found to contain more than two per centum of proof spirit. (d)

"Brewer" means a brewer of beer.

"Sugar" means any saccharine substance, extract, or syrup, and includes any material capable of being used in brewing except malt or corn.

"Commissioners" means Commissioners of Inland Revenue. (e)

"Collector" means the collector of Inland Revenue for the collection in which the premises of a brewer are situate, and includes a person acting as such collector.

"Officer" means officer of Inland Revenue.

"Proper officer" means the officer of the division or ride in which the premises of a brewer are situate, and includes a person acting as such officer, and also any officer superior in matters of excise to such officer.

"Prescribed" and "approved" mean respectively prescribed or approved by the Commissioners.

(c) By 8 & 9 Vict. c. 64, s. 2, any . . . chief or other constable may enter any house or place kept by any retailer of spirits to be consumed elsewhere than on the premises for selling spirits . . . at any time or hour at which such house or place is kept open for any such sale. By 17 & 18 Vict. c. 89, s. 12, the words "chief or other constable" are explained to include Dublin police and the words "house or place" in any Act relating to the sale of spirits wine beer ale cyder or perry in Ireland shall be construed to mean and

extend to every room closet cellar yard stable outhouse shed or any other place whatsoever of belonging or in any other manner appertaining to such house or place [and every particular part of such house or place mentioned in the books of the Inland Revenue and] it shall be lawful for every such . . . constable etc. or any officer of excise with their assistants respectively to enter every such room etc. whatsoever belonging to such house or place.

(d) 48 & 49 Vict. c. 51, s. 4.

(e) See note (k) ante, p. 142.

Sect. 10.

PART II

Brewers and Excise Duty on Beer

Brewers' licence.

10. (3.) If any person shall brew beer without having in force a proper licence under this Act, he shall incur a fine of one hundred pounds, and all worts, beer, and vessels, utensils, and materials for brewing in his possession shall be forfeited.

Excise duty on beer.

11. There shall be charged, collected, levied, and paid for the use of Her Majesty in respect of beer brewed in the United Kingdom, a duty calculated according to the specific gravity of the worts thereof; that is to say,

Upon every thirty-six gallons of worts of a specific gravity of one thousand and fifty-seven degrees the duty of six shillings and threepence; and so in proportion for any difference in quantity or gravity. (f)

Equivalent of "bushel of malt" in corn or sugar, and definition of expression.

12. Forty-two pounds weight of malt or corn of any description, or twenty-eight pounds weight of sugar, shall be deemed the equivalent of a bushel of malt; and the expression "bushel of malt" shall include either of its equivalents, or any quantities of malt, corn, and sugar, or any two of those materials, as by relation to such equivalents shall be equal to a bushel of malt.

Regulations as to charge of duty.

13. (1.) Every brewer shall be deemed to have brewed thirty-six gallons of worts of the gravity of one thousand and fifty-seven degrees for every two bushels of malt entered or used by him in brewing.

(2.) The duty on beer brewed by a brewer other than a brewer for sale shall be charged on the quantity of worts by relation to materials as aforesaid.

(3.) The duty on beer brewed by a brewer for sale shall be charged in respect of every thirty-six gallons of worts produced of the gravity or original gravity of one thousand and fifty-seven degrees, and so in proportion for any difference in quantity or gravity as entered in the book by the brewer, or as ascertained by the officer, whichever is higher.

(a.) If the amount of worts deemed to have been brewed by relation to materials exceeds in quantity and gravity by more than four per centum the worts produced from such materials, the duty shall be charged in respect of the excess over and above the four per centum.

(b.) In respect of such accidental loss and waste as arises in the brewing of beer, a deduction of six per centum shall be made from the quantity of worts produced.

(4.) Where the materials used in brewing by a brewer for sale are proved to the satisfaction of the Commissioners to be of such a description or nature that some deduction from the quantity chargeable by relation to materials should be made, they shall make such a deduction from that quantity as shall, in their opinion, afford just relief to the brewer.

Mode of ascertaining gravity and quantity.

14. (1.) An approved saccharometer and tables shall be used to ascertain the quantity by relation to gravity of all worts; and, in calculating the gravity, a degree of gravity shall be taken as equal to one thousandth part of the gravity of distilled water at sixty degrees Fahrenheit.

(2.) The quantity and gravity so ascertained shall be deemed to be the true quantity and gravity of such worts.

Mode of ascertaining original gravity.

15. When fermentation has commenced in any worts so that the original gravity cannot be ascertained by the saccharometer, such gravity may be determined in the following manner:

(1.) A sample is to be taken from any part of such worts and a definite

(f) See 52 & 53 Vict. c. 7, s. 3.

quantity thereof by measure at the temperature of sixty degrees Fahrenheit shall be distilled :

Sect. 15.

- (2.) The distillate and residue shall each be made up with distilled water to the original measure of the quantity before distillation, and the gravity of each shall be ascertained :
- (3.) The number of degrees by which the gravity of the distillate is less than the gravity of distilled water shall be deemed the spirit indication of the distillate :
- (4.) The degrees of original gravity standing opposite to such spirit indication in the Table in the First Schedule to this Act added to the specific gravity of the residue shall be deemed to be the original gravity of the worts. (g)

16. The duty on beer shall become due immediately on the same being charged by the officer, but, in the case of a brewer for sale, the Commissioners may cause the charge to be made up at the close of each month in respect of all the brewings during that month, and, in that case, the aggregate of the amounts of worts deemed to be brewed by relation to materials, and the aggregate of the amounts of worts produced, shall be treated as worts deemed to be brewed or produced in one brewing, and the Commissioners may, if they think fit, defer the payment of the duty upon such terms as may be prescribed : Provided that the time for payment shall not be later than the fifteenth day of the month succeeding the month in which the duty was charged.

17. [Power to distrain for duties in arrear under warrant of collector.] (h)

18. When any materials upon which a charge of duty has been made, or any worts or beer, shall be destroyed by accidental fire or other unavoidable cause, while the same are on the entered premises of a brewer, the Commissioners shall, on proof of such loss to their satisfaction, remit or repay the duty charged or paid. Loss by fire, etc.

As to Brewers for Sale

19. Any person who brews beer for the use of any other person at any place other than the premises of the person for whose use the beer shall be brewed, and any person licensed to deal in, or retail, beer, who brews beer, shall be deemed to be a brewer for sale. Certain persons to be deemed brewers for sale.

20. A book in the prescribed form shall be delivered by an officer to every brewer for sale, and the following provisions shall have effect in relation to the book, and to the entries to be made therein :— A brewing book to be delivered to brewers for sale and provisions to be observed in relation thereto.

- (1.) The brewer shall keep the book in some part of his entered premises at all times ready for the inspection of the officers, and shall permit any officer at any time to inspect the same and make extracts therefrom.
- (2.) The brewer shall enter separately in the book the quantity of malt, corn, and sugar which he intends to use in his next brewing, and also the day and hour when such next brewing is intended to take place.
- (3.) The brewer shall make such entry, so far as respects the day and hour of brewing, twenty-four hours at the least before he shall begin to mash any malt or corn, or dissolve any sugar, and so far as respects the quantity of malt, corn, and sugar, two hours at the least before the hour entered for brewing.
- (4.) The brewer shall, two hours at the least before the hour entered for brewing, enter the time when all the worts will be drawn off the grains in the mash tun.

(g) This table is to be used for determining such gravity.

(h) See *ant.*, p. 33.

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- (5.) The brewer shall, within one hour of the worts being collected, or, if the worts be not collected before nine in the afternoon, before nine in the forenoon of the following day, enter the particulars of the quantity and gravity of the worts produced from each brewing, and also the description and number of the vessel or vessels into which the worts have been conveyed. (i)
- (6.) The brewer shall, at the time of making an entry, insert the date when the entry is made.
- (7.) The brewer shall not cancel, obliterate, or alter any entry in the book, or make therein any entry which is untrue in any particular.
- (8.) The brewer shall, if so required by the Commissioners, send notice in writing containing the prescribed particulars to the proper officer forty-eight hours before his next brewing is intended to take place.

For any contravention of this section the brewer shall incur a fine of one hundred pounds.

Marking of
vessels and
rooms and
positions of
vessels.

21. (1.) Every brewer for sale must cause to be legibly painted with oil colour, and keep so painted, on some conspicuous part of every mash tun, under-back, wort receiver, copper, heating tank, cooler, and collecting and fermenting vessel, intended to be used by him in his business, and of the outside of the door of every room and place wherein any part of his business is to be carried on, the name of the vessel, room, or place, according to the purpose for which it is intended.

(2.) When more than one vessel, room, or place is used for the same purpose, all such vessels, rooms, or places must be marked by progressive numbers.

(3.) All mash tuns, underbacks, wort receivers, coppers, heating tanks, coolers, and collecting and fermenting vessels, shall be so placed and fixed as to admit of the contents being accurately ascertained by gauge or measure, and shall not be altered in shape, position, or capacity without two days previous notice in writing to the proper officer.

(4.) For any contravention of this section the brewer shall incur a fine of one hundred pounds.

Entry of
premises.

22. (1.) Every brewer for sale must, before he begins to brew, make entry in the prescribed form of all premises, rooms, places, and vessels intended to be used by him for his business, specifying the purpose for which each room, place, and vessel is to be used, and the mark by which it is distinguished.

(2.) The brewer must sign the entry, and deliver it to the proper officer. (j)

(i) When fermentation shall have commenced in any worts before the brewer shall have entered the quantity and gravity thereof in the book provided for that purpose the true original gravity of such worts before fermentation shall be entered by the brewer: 48 & 49 Vict. c. 51, s. 6.

(j) By 48 & 49 Vict. c. 51 (the Customs and Inland Revenue Act, 1885), s. 7 (1.) Every brewer of beer for sale who shall use any description of sugar whether cane sugar saccharine glucose or other saccharine substance or extract or syrup (hereinafter referred to as "sugar") in the brewing of beer must before he begins to store or use the same, make entry of a room on his premises (hereinafter called a sugar store) for the purpose of storing the same.

Sugar store.

(2.) The brewer shall not receive any

sugar unless the same is accompanied by an invoice from the seller thereof showing the marks on each package and the particulars of the description and weight or quantity of the contents.

(3.) All sugar received shall be immediately deposited in the sugar store and shall not be removed therefrom except for the purpose of being used in brewing in accordance with an entry in the book (hereinafter called the brewing book) delivered and kept under section 20 of the Inland Revenue Act, 1880.

(4.) Accounts may be taken as the Commissioners of Inland Revenue may direct of every description of sugar received by a brewer, and any brewer to whom the said Commissioners shall give notice in writing that such accounts will be taken, is hereby required to deliver to the proper officer of Inland Revenue the particulars

23. (1.) All grains in a mash tun must be kept untouched for the space of one hour after the time entered in the book as the time for the worts to be drawn off, unless the officer has attended and taken an account of such grains.

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Provisions as to operations in course of brewing.

(2.) All worts shall be removed successively, and in the customary order of brewing, to the underback, coppers, coolers, and collecting and fermenting vessels, and shall not be removed from the last-mentioned vessels until an account has been taken by the officer, or until after the expiration of twelve hours from the time at which the worts are collected in such vessels.

(3.) When worts shall have commenced running into a collecting or fermenting vessel, the whole of the produce of the brewing shall be collected within twelve hours.

(4.) For any contravention of this section the brewer shall incur a fine of fifty pounds.

24. If the original gravity of any worts contained in the collecting or fermenting vessels shall at any time be found to exceed by five degrees the gravity as entered in the book by the brewer, or as ascertained by the officer, such worts shall be deemed to be the produce of a fresh brewing and be charged with duty accordingly.

Provision for case of excess in gravity of worts.

25. (1.) Every brewer for sale shall keep the total produce of a brewing separate from the produce of any other brewing for the space of twenty-four hours, unless an account of the first-mentioned produce shall have been sooner taken by the officer.

Provisions as to the separation and the mixing of brewings.

(2.) He shall not mix the produce of one brewing with that of any other brewing, except in his store vats or casks, unless he shall have given previous notice in writing to the proper officer, and he shall specify in writing the quantity and gravity of the worts when mixed: Provided, that a brewer having

of all sugar of each and every description in his possession and every invoice relating thereto, and such brewer shall thereafter deliver to the officer all invoices relating to sugar of every description subsequently received.

(5.) The officer shall keep an account of sugar of each and every description received by the brewer and shall debit the brewer with the quantities specified in the invoices produced to him and credit the brewer with the quantities entered in the brewing book as having been used in brewing.

(6.) If on taking account of the stock at any time the quantity of any description of sugar in the possession of the brewer exceeds the quantity of that description which ought, according to the account kept by the officer, to be in his possession, the excess shall be forfeited; and if the quantity be less by more than two per centum than the quantity which ought, according to the account kept by the officer, to be in his possession, the deficiency above such two per centum shall be deemed to have been used in the brewing of beer without due entry in the brewing book and duty shall be charged in respect thereof as if the deficiency had been so used.

(7.) If any brewer of beer for sale shall have any sugar in his possession elsewhere

than in the sugar store or the mash bin or other vessel entered for dissolving sugar or in due course of removal thereto, or shall refuse to produce invoices when so required or use any device to prevent the officer taking a true account of all sugar in his possession he shall incur a fine of £50: see *Att.-Gen. v. King*, 5 Price 195.

8. (1.) A brewer of beer for sale shall not adulterate beer or add any moisture or thing thereto (except finings for the purpose of clarification or other moisture or thing sanctioned by the Commissioners of Inland Revenue) before the same is delivered for consumption, and any beer found to be adulterated or mixed with any other moisture or thing (except as aforesaid) in the possession of a brewer of beer for sale shall be forfeited and the brewer shall incur a fine of £50.

Adulteration.

(2.) A dealer in or retailer of beer shall not adulterate or dilute beer or add any moisture or thing thereto (except finings for the purpose of clarification) and any beer found to be adulterated or diluted or mixed with any other moisture or thing (except finings) in the possession of a dealer in or retailer of beer shall be forfeited and he shall incur a fine of £50: *Crofts v. Taylor*, 19 Q. B. D. 524.

9. [Provisions as to allowances penalties and forfeitures under Excise Acts to extend to this Act.]

Sect. 25. weak worts of a gravity not exceeding twenty-five degrees, may, if he think fit, reserve them for mixing with the produce of his next brewing, but in such case he shall keep all such weak worts in the coppers, heating tanks, or other vessels entered for the purpose.

(3.) For any contravention of this section the brewer shall incur a fine of one hundred pounds.

Power for
officer to take
samples.

26. (1.) An officer may take such samples as he may deem necessary of any worts or beer or materials for brewing in the possession of any brewer for sale.

(2.) The brewer may, if he wishes, before any such sample is taken, stir up and mix together all such worts, beer, or materials from which the sample is taken.

Penalty for
concealing
worts or beer,
or adding
sugar thereto
after duty
charged.

27. If any brewer for sale shall conceal any worts or beer so as to prevent any officer from taking an account thereof, or shall mix any sugar with any worts or beer so as to increase the quantity or gravity thereof after an account of such worts or beer has been taken by an officer and the duty has been charged thereon, he shall, for every such offence, incur a fine of one hundred pounds, and the worts or beer in respect of which the offence is committed, together with the vessels containing the same, shall be forfeited. (k)

Brewer to pro-
vide scales,
weights, lad-
ders, etc.

28. (1.) Every brewer for sale must provide and maintain sufficient and just scales and weights and other necessary and reasonable appliances to enable the officers to take account of, or check by weight, gauge, or measure all materials and liquids used or produced in brewing.

(2.) He must also render all necessary assistance to the officers in the taking of such accounts.

(3.) He must also, if required by the officer, provide sufficient lights, ladders, and other conveniences.

(4.) For every contravention of this section the brewer shall incur a fine of one hundred pounds.

Power of entry
and examina-
tion by officers.

29. (1.) An officer may at any time, either by day or night, enter any part of the entered premises of a brewer for sale, to take an account of the materials used or to be used in brewing, and of the worts and beer produced. (l)

(2.) If an officer, after having demanded admission into the entered premises of a brewer for sale, and declared his name and business at any entrance or window thereof, is not immediately admitted, the officer, and any person acting in his aid, may at any time, either by day or night (but at night only in the

retailer of beer.

(k) See *Att.-Gen. v. Brewster*, ante, p. 143. By 59 & 60 Vict. c. 28, s. 11 (1.), a dealer in or retailer of beer shall not receive or have in his custody or possession any sugar saccharine substance extract of syrup (except for domestic use the proof whereof shall lie on him) or any preparation for increasing the gravity of beer. (2.) If a dealer in or retailer of beer receives or has in his custody or possession any article in contravention of this section the article shall be forfeited and he shall incur a fine of £20. (3.) This section shall not apply to sugar and other preparations deposited in conformity with 48 & 49 Vict. c. 51, s. 7 (*sup.*) in the entered sugar store of a brewer of beer for sale nor to sugar or syrup kept for sale in the ordinary course of trade of a grocer, where the brewer or grocer carries on upon the same premises the trade or business of a dealer in or

(l) By 3 & 4 Vict. c. 61, s. 11, it shall be lawful for any officer of excise at all times during the hours in which any house licensed for the retail of beer or cyder may be kept open to enter into every house cellar room or place entered for the storing keeping or retailing of beer or cyder and to make search for and seize all wine and spirits and sweets which may be found in any such house etc. and to examine all beer or cyder kept therein.

By s. 12 any such officer may during the hours which any house is kept open for the sale of beer after the rate of one penny halfpenny or after a less rate the quart to enter into such house cellar room or place for the keeping or retailing such beer and to make search for and seize all wines spirits sweets and all beer which by law they are not entitled to sell.

presence of an officer of the peace), break open any door or window of the premises, or break through any wall thereof for the purpose of obtaining admission, and the brewer shall incur a fine of one hundred pounds.

Sect. 29.

30. (1.) If any officer has reason to suspect that any private or concealed pipe, or conveyance, or vessel, is kept or made use of by a brewer for sale, he may, either by day or night, but at night only in the presence of an officer of the peace, break open any part of the premises of such brewer and forcibly enter therein, and may break up the ground in or adjoining such premises, or any wall thereof, to search for such private or concealed pipe, or conveyance, or vessel.

Power to enter and search for concealed pipes, etc.

(2.) If such officer shall find any such pipe or conveyance, he may enter any house in the possession of any other person into which such pipe or conveyance may lead, and may break up any part of such house or premises to search for the vessel communicating with such pipe.

(3.) Every such pipe, conveyance, or vessel, and all beer, worts, or materials, for brewing found therein, shall be absolutely forfeited, and the brewer shall incur a fine of one hundred pounds.

(4.) If any damage is done in the search, and such search is unsuccessful, the damage shall be made good. (m)

As to Brewers other than Brewers for Sale

32. A paper in the prescribed form shall be delivered by an officer to every brewer, other than a brewer for sale, if chargeable to the duty on beer under this Act, and the following provisions shall have effect in relation to the paper and the entries to be made therein:—

A brewing paper to be delivered to brewers other than brewers for sale for the purpose of entries therein.

(1.) The brewer shall, before commencing to brew, enter in the paper the quantity of malt, corn, and sugar which he intends to use in the brewing;

(2.) The brewer shall, on demand by an officer, produce the paper for his inspection, and shall not cancel, obliterate, or alter any entry in the paper, or make any entry which is untrue in any particular.

For any contravention of this section the brewer shall incur a fine of ten pounds.

33. (1.) The Commissioners may, when they think fit, require a brewer other than a brewer for sale to verify the entries in the paper delivered to him by a declaration to be made by him before a justice of the peace or an authorized officer.

Provisions as to charge and payment of duty.

(2.) The charge of duty shall be made, and the duty shall be paid, at such times as the Commissioners shall appoint.

(3.) Provided that if the annual value of the house occupied by the brewer does not exceed ten pounds, the beer brewed by him shall not be charged with duty. (n)

34. (1.) A brewer, other than a brewer for sale, shall only brew beer for his own domestic use, or for consumption by farm-labourers employed by him in the actual course of their labour or employment.

Beer brewed to be for domestic use.

(2.) The brewer shall only brew on premises occupied by him, or, in case the brewer occupies a house of an annual value not exceeding ten pounds, on premises gratuitously lent to him by a brewer other than a brewer for sale.

(3.) If the brewer contravenes either of the foregoing provisions of this

(m) *Stewart*, 2 *Irv.* 416.

(n) See *Tippett v. Hart*, 10 Q. B. D. 483.

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section, or sells, or offers for sale, any beer brewed by him, he shall incur the penalty of ten pounds. (o)

Power of entry.

35. Any officer may at all reasonable times enter and inspect any premises used for the purposes of brewing by a brewer other than a brewer for sale, and examine the vessels and utensils used by him for the purposes of brewing.

*Drawback on Beer***Drawback on beer exported**

36. There shall be allowed and paid in respect of beer which shall be exported from the United Kingdom to foreign parts as merebandise, or shipped for use as ship's stores, a drawback calculated according to the original gravity thereof; (that is to say,)

Upon every thirty-six gallons of an original gravity of one thousand and fifty-seven degrees the drawback of six shillings and threepence, and so in proportion for any difference in quantity or gravity.

Provisions as to the drawback.

37. (1.) It shall be lawful for any person to export as merebandise to foreign parts, or for use as ship's stores, any beer brewed by a brewer for sale in the United Kingdom.

(2.) The beer shall be in such casks or packages as may be prescribed, and the person intending to export the same shall produce to the proper officer at the place from which the beer is to be exported a declaration by the brewer made before an authorized officer stating the date upon which the beer was brewed and the original gravity thereof, and that the full duties of excise have been charged thereon.

(3.) He shall also give to the said officer a notice in the prescribed form specifying the mark and number on each cask or package to be exported, the original gravity and quantity of the beer therein, and the amount of the drawback claimed.

Samples to ascertain gravity of beer for export.

38. (1.) An officer or an officer of customs may take a sample of beer from any cask or package produced for shipment on drawback for the purpose of ascertaining in the manner authorized by this Act the original gravity thereof.

(2.) If the gravity so ascertained, or the quantity tested by gauge or measure, shall be less than the gravity or quantity stated in the declaration, and notice delivered to the proper officer, or, if such declaration or notice shall contain any untrue statement, no drawback shall be payable in respect of the beer therein referred to, and the brewer, and also the person intending to export the beer, shall incur a fine of fifty pounds.

As to debenture for payment of drawback.

39. (1.) The officer of customs at the port from which the beer is shipped shall endorse on the notice a certificate of the quantity of beer actually exported, and at the expiration of one month from the date of such certificate the proper officer shall deliver to the exporter or his agent a debenture in the prescribed form specifying the amount of the drawback payable in respect of the beer.

(2.) The debenture must be presented to the collector with a declaration endorsed thereon containing the prescribed particulars, signed by the exporter, and the collector shall thereupon pay to the exporter the amount specified in the debenture.

(3.) Where a certificate of landing at the port of destination is required, such certificate must be delivered to the collector previously to the payment of the drawback.

(o) In the case of a brewer (not being a brewer for sale) who shall be the occupier of a house of an annual value not exceeding eight pounds and shall brew

beer solely for his own domestic use no licence shall be required and the beer shall be exempt from duty: 49 & 50 Vict. c. 18, s. 3.

Supplementary

46. The duties and drawbacks of excise, charged and allowed by Parts II. (and III.) of this Act, and the licences therein mentioned, shall be under the management of the Commissioners; and all the powers, provisions, regulations, and directions contained in any Act relating to excise duties, drawbacks, or licences, or to penalties or forfeitures under excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the duties and drawbacks charged and allowed by Parts I. and II. of this Act and the licences therein mentioned, and the penalties and forfeitures imposed by this Act, so far as the same are applicable and are consistent with the provisions of this Act, as fully and effectually as if the same had been herein specially enacted with reference to the last-mentioned duties, drawbacks, licences, penalties, and forfeitures respectively.

Powers and provisions to be applied to excise duties, drawbacks, and licences under this Act.

48. Nothing in this Act contained shall in anywise alter or affect the rights and privileges now existing under the charters of—

Saving rights under certain charters.

- (1.) Any university in the United Kingdom, or
- (2.) The master, wardens, freemen, and commonalty of the Vintners of the city of London, or
- (3.) The mayor or burgesses of the borough of Saint Albans in the county of Hertford.

As to Tobacco, by 3 & 4 Vict. c. 18 (The Tobacco Act, 1840)—

2. Every manufacturer of and dealer in and retailer of tobacco or snuff in the United Kingdom shall make a true entry of every workhouse, storehouse, room, shop, and place by him made use of, or intended to be made use of, for the manufacturing, storing, keeping, and selling of tobacco or snuff, by delivering such entry to the officer of excise in whose survey his manufactory or premises shall be situated; and in every such entry every workhouse, storehouse, room, shop, and place shall be distinguished by a particular number or letter, or number and letter, or letters; and every such workhouse, storehouse, room, shop, and place shall also be kept marked and numbered with the like distinguishing numbers or letters, or number and letters, corresponding to the description thereof in the entry; and in default thereof such manufacturer, dealer, or retailer shall, for every workhouse, storehouse, room, shop, or place not entered, or not marked or numbered, forfeit one hundred pounds, together with all tobacco and snuff found therein.

Manufacturers, dealers, and retailers of tobacco or snuff to enter their premises with the officers of excise.

3. It shall be lawful for any officer of excise at any time, but between the hours of ten of the clock in the evening and six of the clock in the morning only, with the assistance of a constable or other peace officer, to enter into any workhouse, storehouse, room, shop, or place made use of by any manufacturer of, dealer in, or retailer of tobacco or snuff, for the manufacturing, keeping, or selling of any tobacco or snuff, and to inspect and examine all tobacco and snuff therein; and every manufacturer of, dealer in, and retailer of tobacco or snuff, who shall, on demand, refuse to show to any officer of excise any tobacco or snuff in his custody or possession, or shall conceal from the sight or inspection of any officer of excise any tobacco or snuff, shall forfeit two hundred pounds, together with all the tobacco or snuff so concealed. (*p*)

Officers of excise may enter premises, and examine tobacco and snuff therein.

(*p*) See *R. v. Woodrow*, 15 M. & W. 404.

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Leaf of unmanufactured tobacco not to be received into a manufacturer's stock otherwise than from the warehouse, and accompanied by a permit.

4. No manufacturer of tobacco or snuff shall receive into any workhouse, storehouse, room, shop, or place, or into his custody or possession, any leaf or unmanufactured tobacco of any description otherwise than from the warehouse in which the same shall be warehoused under the laws and regulations of the revenue of customs, and in the same hogsheads, cask, chest, or package, with the same marks and numbers thereon, in which the same shall be cleared and delivered from such warehouse, on payment of the duty (save and except in the case of samples duly ticketed and certified by the proper officer of customs), nor without a true and lawful permit granted by the proper officer of excise, under the laws and regulations of excise relating to permits accompanying such tobacco; and every manufacturer of tobacco or snuff who shall receive or have in his custody or possession any leaf or unmanufactured tobacco contrary to the directions aforesaid, shall forfeit the same, and two hundred pounds for every such offence.

Permit to be delivered up on the next visit of the officer.

5. Every manufacturer of tobacco or snuff who shall receive into his custody or possession any leaf or unmanufactured tobacco, shall, on the next visit of the officer of excise under whose survey he shall be, produce and deliver up to such officer the permit which shall have accompanied such tobacco, and shall also, if required, show to such officer all such tobacco, or in case of any part thereof having been laid down for manufacture before the visit of the officer, so much thereof as shall remain, on pain of forfeiting for every omission or neglect two hundred pounds, and all such leaf or unmanufactured tobacco.

No leaf or unmanufactured tobacco to be removed without a permit.

6. No leaf or unmanufactured tobacco of any description, save and except such samples as aforesaid, shall be carried or removed from any part or place in the United Kingdom to any other place or part thereof, without a true and lawful permit granted by the proper officer of excise, under the rules and regulations of an Act passed in the second year of the reign of his late Majesty King William the Fourth, intituled, "An Act to consolidate and amend the laws regulating the granting and issuing permits for the removal of goods under the laws of excise," accompanying the same, under the pains, penalties, and forfeitures in the said Act contained. (g)

2 & 3 Will. IV. c. 16.

A book to be delivered to manufacturers, who shall enter therein all tobacco received, with the name of the person from whom received, etc.

8. A book, prepared with proper and distinct columns for the purpose, shall be delivered by the proper officer of excise to every manufacturer of tobacco or snuff; and every such manufacturer shall, on the same day on which he shall receive any leaf or unmanufactured tobacco, or any stalks or returns of tobacco, write and enter in such book as aforesaid, in the proper column prepared for such purpose, the day when and the number of pounds weight of leaf or unmanufactured tobacco, stalks, or returns of tobacco which he shall have so received, and the christian and surname of the person from whom and the place from which he shall have received the same; and every such manufacturer shall keep such book, with all entries made therein, in some public and open part of his entered premises, for the inspection of the officers of excise, and shall deliver up every such book as aforesaid to any officer of excise demanding the same, and permit him to make any minute therein or any extract therefrom, which such officer shall think fit; and every manufacturer of tobacco who shall receive any leaf or unmanufactured tobacco, stalks, or returns of tobacco into his custody or possession, and shall not make entry of the particulars thereof as aforesaid within the time herein-before required, or who shall not keep such book as aforesaid, or shall not deliver up the same to any officer of excise, on demand, or shall obstruct or hinder any officer of excise in making any minute therein or

Such book to be open to inspection of excise officers, etc.

(g) By s. 11 of that act all goods removed without permit are forfeited, see *ante*, p. 146.

extract therefrom, or shall convey away or conceal the same, or destroy or tear out any leaf therefrom, or make any false entry therein, or fraudulently alter any entry therein, shall forfeit two hundred pounds, together with all the leaf or unmanufactured tobacco, stalks, or returns of tobacco, of which due entry shall not have been made in such book.

Sect. 8.

13. No drawback shall be allowed on any cut, roll, or carrot tobacco containing any tobacco stalks, or which has not been wholly made from tobacco leaf having the tobacco stalk stripped and separated therefrom, or from such leaf so stripped, and returns of tobacco leaf so stripped and without the stalks thereof; and every manufacturer of tobacco who shall manufacture or have in his custody or possession any such cut, roll, or carrot tobacco for exportation, shall forfeit two hundred pounds; and all such tobacco shall be forfeited, and may be seized by any officer of customs or excise.

No drawback on cut, roll, or carrot tobacco containing stalks, etc.

Penalty on manufacturing such for exportation.

14. No drawback shall be allowed on any tobacco which shall not have been wholly manufactured from tobacco on which the full duty on importation shall have been paid, nor on any tobacco which shall be mixed with any dirt or rubbish, or which shall be made or manufactured with or to which shall be added any other ingredients, matter, or thing not necessary or usual in the manufacturing of tobacco.

No drawback on tobacco not properly manufactured.

15. Every person who shall enter or ship, or cause to be entered or shipped, or produce or cause to be produced to any officer of customs to be shipped for exportation, any tobacco not entitled to drawback under this or any other Act relating to tobacco, or any other goods, matter, or thing as tobacco, the same not being tobacco, or shall fraudulently remove, deposit, or conceal any tobacco or other goods, matter, or thing, with intent unduly to obtain any drawback on tobacco, or any greater drawback than he would otherwise be entitled to, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, and two hundred pounds, at the election of the commissioners of customs; and all such tobacco or other goods, matters, or things shall be forfeited, and may be seized by any officer of customs or excise.

Penalty on fraudulently attempting to obtain drawback.

5 & 6 Vict. c. 93 (The Tobacco Act, 1842)

1. No manufacturer of tobacco shall, in manufacturing any tobacco, make use therewith of any other material, or any other liquid or substance or matter or thing, than water only, or in manufacturing any snuff make use therewith of any other material, or any other liquid or substance or matter or thing, than water, or water and salt, or alkaline salts (r) only, or lime water in snuff known as Welch or Irish snuff; and every manufacturer of tobacco who shall, in manufacturing any tobacco, make use therewith of any other material, liquid or substance, matter or thing, than tobacco and water only, or in manufacturing any snuff make use therewith of any other material, liquid or substance, matter or thing, than water, or water and salt, or alkaline salts only, or limo

Manufacturers to use water only in manufacturing tobacco, and no other liquid or substance than as herein described in manufacturing snuff.

(r) The 1st, 3rd and 4th sections of this Act shall as respects the term salt and alkaline salts be construed to mean and include only the carbonates chlorides and sulphates of potassium and sodium and the carbonate of ammonium. . . . If any person . . . being a manufacturer or dealer in or retailer of tobacco or snuff shall have in his custody or possession or shall sell or offer for sale any snuff which after being

dried at 212° F. shall be found to contain a percentage of more than 26 per cent. of carbonates chlorides and sulphates of potassium sodium and ammonium he shall forfeit . . . the said snuff and in calculating the said percentage the salts of potassium sodium and ammonium of every description naturally present in the tobacco shall be included: 41 & 42 Vict. c. 15, s. 25.

- Sect. 1.** water in snuff known as Welch or Irish snuff, and every manufacturer of, dealer in, or retailer of tobacco, who shall add to, mix with, or put into or amongst, or who shall cause or suffer or permit to be added to, mixed with, or put into or amongst any tobacco or snuff, unmanufactured, manufacturing, or manufactured, any other material, liquid, substance, matter, or thing, than, as respects tobacco, water only, and, as respects snuff, water, or water and salt, or alkaline salts only, or lime water in snuff known as Welch or Irish snuff, shall forfeit three hundred pounds. (s)
- Penalty.** 2. Nothing herein-before contained shall subject any manufacturer of, dealer in, or retailer of tobacco to the said penalty of three hundred pounds, or to any forfeiture, for or by reason of his scenting or flavouring any snuffs, so that only the essential oils usually made use of for that purpose shall be used for communicating the scent or flavour, nor any manufacturer to the said penalty for or by reason of his using oil in making up spun or roll tobacco. (t)
- Penalty not to be incurred by use of essential oils for scenting snuff, or of oil in making up spun or roll tobacco.** 3. Every manufacturer of, dealer in, or retailer of tobacco, who shall receive or take into or have in his possession, or who shall sell, send out, or deliver, any tobacco or snuff which shall have been manufactured with, or shall have added thereto or mixed therewith, or into or amongst which there shall have been put, either before or whilst in process of manufacture, or after being manufactured, or in which there shall be found on examination thereof, any other material, liquid, substance, matter, or thing, than, as respects tobacco, water only, or in roll tobacco water and oil only, and, as respects snuff, water, or water and salt, or alkaline salts only, or lime water in snuff known as Welch or Irish snuff, shall forfeit two hundred pounds.
- Penalty on receiving, sending out, or having in possession tobacco or snuff manufactured otherwise than with water, etc., £200.** 4. All tobacco and snuff which shall have been manufactured with, or shall have added thereto or mixed therewith, or into or amongst which there shall have been put, either before or whilst in process of manufacture, or after being manufactured, or which on examination shall be found to contain any other material, liquid, substance, matter, or thing than, as respects tobacco, water only, or in roll tobacco water and oil, (u) and, as respects snuff, water, or water and salt, or alkaline salts only, or lime water in snuff known as Welch or Irish snuff, shall, wheresoever the same may be found, be forfeited.
- Tobacco and snuff manufactured otherwise than with water, etc., shall be forfeited.** 5. No manufacturer of tobacco shall receive or take into or have in his
- Manufacturers not to have in** (s) If any manufacturer of tobacco shall have in his custody or possession any tobacco (except tobacco which must undergo some process of treatment or manufacture before it is fit for sale) or if any dealer in or retailer of tobacco shall have in his custody or possession any tobacco and such tobacco shall in either case on being dried at a temperature of 212° Fahr. be decreased in weight by more than 32 per cent. . . . the tobacco shall be forfeited. Roll tobacco or cut tobacco in the custody or possession of a manufacturer of tobacco which is treated in the course of manufacture by baking or hot-pressing or storing shall be deemed fit for sale when the same has cooled after such treatment and roll tobacco in such custody or possession which is treated in the course of manufacture by pressing merely shall be deemed fit for sale immediately upon being put in press: 50 & 51 Vict. c. 15, s. 4; see 4 Ed. VII. c. 7, s. 3. 11y 63 & 64 Vict. c. 35, s. 1 (1.):
- If any manufacturer of tobacco has in his custody or possession fit for sale or tenders for drawback or if any dealer in or retailer of tobacco has in his custody or possession any tobacco containing a greater proportion of oil than 4 per cent. he shall incur an excise penalty of £50, and the tobacco shall be forfeited. (2.) In calculating the proportion of oil for the purposes of this section any fatty or oily substance which is naturally present in the tobacco shall be included as oil. (3.) In this section the expression "fit for sale" has the meaning assigned to it by 50 & 51 Vict. c. 15, s. 4, *supra*.
- (t) Not to extend to relieve him from such liability in case he shall make use of any oil in the manufacture of roll tobacco other than essential oil for the purpose of flavouring and olive oil in the process of spinning and rolling up the tobacco: 42 & 43 Vict. c. 21, s. 27.
- (u) Olive oil or essential oil: 42 & 43 Vict. c. 21, s. 27.

custody or possession any sugar, treacle, molasses, or honey (except for the necessary and ordinary use of his family, the proof whereof shall lie on such manufacturer), nor any commings or roots of malt, or any ground or unground roasted grain, ground or unground chicory, lime, sand (not being tobacco sand), nmbre, ochre, or other earths, sea weed, ground or powdered wood, moss, or weeds, or any leaves, or any herbs or plants (not being tobacco leaves or plants) respectively, nor any substance or material, syrup, liquid, or preparation, matter or thing, to be used or capable of being used as a substitute for or to increase the weight of tobacco or snuff, on pain of forfeiting the same and two hundred pounds.

Sect. 5.

their possession
sugar, honey,
leaves, etc.

Penalty, for-
feiture thereof
and £200.

7. It shall be lawful for any officer of excise, at any time he shall see fit, to take a sample or samples of any tobacco or snuff unmanufactured, or in process of manufacture, or manufactured, in the stock or possession of any manufacturer of, dealer in, or retailer of tobacco, paying for the same, if demanded, at the current wholesale price of such tobacco or snuff.

Officers of ex-
cise may take
samples of to-
bacco or snuff.

8. Every person who shall cut, grind, pound, colour, stain, dye, or manufacture any leaves, or any herb or plant, moss or weed, or any wood, chicory, commings or roots of malt, or any other vegetable or other matter or material, to imitate or resemble tobacco or snuff, or who shall prepare any of the said articles, matters, or materials to be mixed with or to be added to tobacco or snuff, or who shall have in his custody or possession any leaves, or any herb, plant, moss, or weed, or any ground or powdered wood, chicory, commings or roots of malt, or any other vegetable or other matter or material, cut, ground, pounded, coloured, stained, dyed, or manufactured to imitate or resemble tobacco or snuff, or prepared for the purpose of being mixed with or added to tobacco or snuff, or intended to be so cut, ground, pounded, coloured, stained, dyed, or manufactured or prepared, or who shall sell, dispose of, or deliver to any manufacturer of tobacco any leaves, herbs, plants, moss, or weeds, ground or powdered wood, chicory, commings or roots of malt, or other vegetable or other matter, or any preparation or mixture thereof, or any syrup, liquid, or preparation to be used in the manufacture of tobacco or snuff, or to be added to or mixed therewith, shall forfeit two hundred pounds; and all such leaves, herbs, plants, moss, or weed, ground or powdered wood, chicory, commings or roots of malt, and other vegetable or other matter or preparation, or mixture thereof, syrup, liquid, or preparation, together with all machines, tools, materials, vessels, and utensils for cutting, grinding, pounding, colouring, staining, dyeing, manufacturing, or preparing the same, shall be forfeited.

No person to
cut, colour, or
manufacture,
or have in his
possession, any
leaves or other
things to imi-
tate or to be
mixed with
tobacco or
snuff.

Penalty, £200
and forfeiture
thereof, etc.

10. No tobacco stalks or returns of tobacco shall be removed from any place in or part of the United Kingdom to any other place or part thereof in any quantity less than fifty pounds weight, nor unless the package containing the same shall have firmly and securely pasted or glued thereon a certificate, clearly written or printed, and signed by the manufacturer by whom the same shall be sent out, or his foreman or chief workman, on his behalf, setting forth the name of such licensed manufacturer, and the entered premises from which such tobacco stalks or returns of tobacco shall be sent out, the weight of the same, the day on and the month and year in which the same shall be sent out, and the name and entered premises of the licensed manufacturer to whom the same are to be delivered; and every manufacturer of tobacco who shall send out, deliver, or remove or receive any tobacco stalks or returns of tobacco in any less quantity than aforesaid, or not contained in a package having such certificate as aforesaid firmly pasted or glued thereon, or who shall make out or use any false certificate, shall forfeit two hundred pounds; and all tobacco stalks or returns of tobacco which shall be sent out, delivered, or received or

Tobacco stalks
not to be re-
moved in less
quantities than
fifty pounds,
nor without a
certificate.

Sect. 10. bo found removing in any less quantity than as aforesaid, or without such certificate as aforesaid, shall be forfeited, and the person removing or who shall have removed the same shall forfeit fifty pounds.

No person shall hawk about tobacco or snuff for sale under a penalty, and officers may arrest offenders, and convey them before a justice.

13. No person or persons shall hawk or sell or offer for sale any tobacco or snuff of any description in any house or premises, or in or about the streets or highways or other places, or in any other manner or place whatsoever, except as a licensed manufacturer of or dealer in or retailer of tobacco in his entered premises, on pain of forfeiting all tobacco and snuff in his possession, and one hundred pounds; and it shall be lawful for any officer of excise or customs to arrest and detain any person who shall hawk or sell or offer for sale any tobacco or snuff in any house or premises, or in or about the streets or highways or other places, or in any other manner than as aforesaid, and to convey such person before one or more of her Majesty's justices of the peace residing near to the place where such person shall be arrested and detained; . . . Provided always, that nothing herein-before contained shall extend to make liable to the said penalty any servant duly employed by any licensed manufacturer of or dealer in tobacco or snuff to travel for orders, and producing samples, in the due and ordinary course of business. (x)

26 & 27 Vict. c. 7 (The Tobacco Act, 1863)

Drawbacks on exportation, etc.

1. Upon every pound of tobacco manufactured in Great Britain and Ireland upon which the duties of Customs on importation shall have been paid, on the same being by any licensed manufacturer exported as merchandise, or deposited in any bonded warehouse to be used as ships stores, and packed in whole and complete cases, (y) each weighing not less than eighty pounds, (z) there shall be allowed on each exportation or deposit thereof a drawback of three shillings and threepence, subject to such increase or reduction in the amount of such drawback as may result from the examination of such tobacco or a sample or samples thereof under the following rule; that is to say,

For every one hundred pounds of tobacco which shall be found to contain fourteen pounds of moisture and eighty-six pounds of dry tobacco,

(x) If any tobacco the growth or produce of any part of the United Kingdom manufactured or unmanufactured or mixed with any tobacco of foreign growth shall be delivered to received by or found in the possession of any manufacturer dealer in or retailer of tobacco or snuff in any quantity whatsoever or if any such tobacco shall be delivered to or received by or be found in the possession of any other person or persons whatsoever in any quantity exceeding 1 lb. in weight or if any manufacturer or dealer in or retailer of tobacco or snuff shall manufacture or use any tobacco the growth of any part of the United Kingdom or shall mix any such tobacco with any tobacco of foreign growth or with any snuff made from tobacco of foreign growth or if any manufacturer dealer in or retailer of tobacco or snuff shall purchase or sell any tobacco the growth of any part of the United Kingdom or any tobacco or snuff manufactured in the whole or in part from tobacco the growth of any part of the United King-

dom or if any person whatsoever shall sell or dispose of any such tobacco . . . all such tobacco the growth of any part of the United Kingdom manufactured or unmanufactured mixed or unmixed and all snuff made wholly or in part from any such tobacco shall be forfeited and may be seized by any officer of customs or excise: 1 & 2 Will. IV. c. 13, s. 4. This and any other Act prohibiting the growth of tobacco in I. is repealed; 8 Ed. VII. c. 16, s. 3. By sub-s. (2.) the Commissioners may make regulations as to manufacture etc. and if any person acts in contravention thereof the article in respect of which the offence is committed shall be forfeited. As to S. sec 8 Ed. VII. c. 10, to the same effect.

(y) Or packages.

(z) Gross weight or such less weight as the Commissioners of Customs may permit: 60 & 61 Vict. c. 24, s. 3. See as to additional drawback: 4 Ed. VII. c. 7, s. 3, and 6 Ed. VII. c. 8, s. 2.

the drawback of three shillings and threepence per pound shall be allowed, and so in proportion for any other quantity; and if on examination the proportion of moisture contained therein shall be found to exceed fourteen pounds in every one hundred pounds weight thereof, a proportionate reduction shall be made in the drawback allowed in respect of every pound of such excess of moisture; but if the proportion of moisture contained therein shall be found to be less than fourteen pounds in every one hundred pounds weight thereof, a proportionate increase shall be made in the drawback allowed in respect of every pound below fourteen pounds in every one hundred pounds weight thereof:

And the drawback allowed by this Act on the exportation of tobacco as merchandise shall be ascertained and paid with all convenient speed after the shipment thereof; and the drawback allowed on the deposit of tobacco in the warehouse for use as ships stores only shall be ascertained and paid with all convenient speed after the deposit thereof:

Provided always, that no tobacco shall be exported from any ports or places which shall not have been approved for the importation of tobacco; and no drawback shall be allowed upon any tobacco, except snuff, in which the inorganic matter contained therein shall exceed the proportion of twenty-two pounds in every one hundred pounds weight of such tobacco, exclusive of water; and if such tobacco shall contain less than twenty-two pounds and more than eighteen pounds of such inorganic matter in every one hundred pounds weight, exclusive of water, a deduction shall be made from the drawback allowed of three shillings and threepence in respect of every pound of such excess of inorganic matter above eighteen pounds in the one hundred pounds as aforesaid: Nor shall any drawback be allowed upon any tobacco in which the sand contained therein shall exceed two pounds in every one hundred pounds of such tobacco, exclusive of water: Nor shall any drawback be allowed on the exportation of any cavendish or negrohead tobacco manufactured in bond and delivered for home consumption: Nor shall any drawback be allowed upon any tobacco in which there shall be found more than twenty-five pounds of tobacco stalks in every one hundred pounds weight of such tobacco, exclusive of water; nor unless the tobacco stalks contained therein shall have been fairly cut in the same with portions of the lamina of the leaf adhering thereto: (a) Provided nevertheless, that the full drawback of three shillings and threepence per pound shall be allowed upon snuff on the exportation thereof, if the quantity of inorganic matter contained therein does not exceed the proportion of eighteen pounds in every one hundred pounds weight of such snuff, exclusive of water; but if it contain more than that proportion of inorganic matter, a deduction shall be made from the drawback allowed of three shillings and threepence in respect of every pound of such excess above the proportion of eighteen pounds in the hundred: And in assessing the duty on any package of tobacco imported into Great Britain and Ireland, or in calculating the drawback allowable on the exportation or deposit in the warehouse of any package of tobacco from Great Britain and Ireland, no duty shall be charged or a drawback allowed in respect of any fraction of a pound: And it shall be lawful for the officers of Customs for

(a) These limitations may be relaxed by the Commissioners: 59 & 60 Vict. c. 28, s. 6. By the same section the same drawback shall be allowed in respect of snuff deposited by a licensed manufacturer in a bonded warehouse . . . for the purpose of being converted into sheep-wash

etc. for exportation under bond or of being mixed with substances as Commissioners may prescribe so as to render it no longer capable of being used as snuff or tobacco—such snuff to be exempt from duty. See also 4 Ed. VII. c. 7, Sch.

Sect. 1. the purposes of this Act to take samples of any tobacco imported into or entered for exportation from Great Britain and Ireland, or deposited in the warehouse to be used as ships stores : And in case any dispute shall arise as to the quantity of moisture contained in any tobacco imported into Great Britain and Ireland, or as to the quantity of water or inorganic matter, including sand, contained in any tobacco upon which drawback is claimed on exportation, it shall be lawful for the officers of Customs to submit any such tobacco or samples thereof to the officers of Inland Revenue or Excise for examination, and the decision of such officers of Inland Revenue or Excise as to the quantity of moisture or inorganic matter contained therein shall be final, and the amount of duty or drawback in respect thereof shall be determined accordingly.

Commissioners may appoint warehouses for manufacture of tobacco in bond.

2. The Commissioners of Customs shall or may by order under their hand from time to time direct in what warehouses or in what parts or divisions of any warehouses, now approved or appointed or hereafter to be approved or appointed for the security of duties on tobacco under this or any Act in force relating to the Customs, so long as such appointment or approval shall remain unrevoked, the processes of manufacturing or converting unmanufactured tobacco into cavendish or negrohead, and the weighing, making into parcels, wrapping up, and labelling of cavendish or negrohead, whether of British or foreign manufacture, may respectively be carried on, and how and in what manner such warehouses, or parts or divisions thereof, shall be secured by locks, fastenings, or otherwise, and shall and may require such security by bond or otherwise as they shall deem necessary from the importer or manufacturer of any tobacco which shall be deposited therein for security of the duty due on such tobacco or other materials or ingredients, or brought therein or thereto for the purpose of being manufactured or used in the manufacture thereof, or for the purpose of being packed, wrapped, or labelled as aforesaid, or for the due and safe removal of such tobacco or other materials or ingredients from one warehouse to another, or from one part or division of any warehouse to any other part or division of the same or any other warehouse, and for the due observance of the terms, conditions, and requirements of this Act, and of the rules and regulations of the Commissioners in respect thereof.

Cavendish or negrohead may be manufactured in bond.

3. It shall be lawful for licenced manufacturers of tobacco to manufacture in such warehouses, or parts or divisions thereof, as shall be approved by the Commissioners of Customs for the manufacture of tobacco in bond, the several descriptions of tobacco respectively called or known as cavendish and negrohead from any leaf or other unmanufactured tobacco duly warehoused for security of duties of Customs, and to use in such manufacture materials or ingredients for sweetening or flavouring the same (not being the leaves of trees or plants other than of the tobacco plant), anything to the contrary in any other Act in force to the contrary notwithstanding; and it shall also be lawful for any such manufacturer or any importer of cavendish or negrohead tobacco, in such warehouse, part or division of such warehouse, to pack or make up, wrap, and label in parcels of the weight and in the manner hereinafter mentioned any cavendish or negrohead tobacco which shall have been so manufactured in bond as aforesaid, or which shall have been imported in the manufactured state : Provided, that such manufacture and the packing or making up, wrapping and labelling thereof, shall be done and performed in accordance with and under such terms and conditions as are prescribed by this Act, and under and subject to such other rules and regulations as the said Commissioners shall from time to time see fit to direct.

4. No cavendish or negrohead tobacco, whether imported and warehoused as such or manufactured in the warehouse, shall be delivered from any warehouse for home consumption except under the following conditions :

Sect. 4.

Cavendish and negrohead tobacco not to be delivered for home consumption, except on conditions herein specified.

1. Such tobacco shall be made into separate packets of such weights respectively as the Commissioners of Customs shall direct, not exceeding one pound nor less than one ounce each :
2. Each such packet shall be enclosed by or at the expense of the importer or manufacturer in a wrapper approved by the Commissioners of Customs :
3. Each such wrapper shall be securely fastened by a label, to be provided by the Commissioners of Customs, and pasted on such wrapper by such importer or manufacturer so that the same cannot be opened nor any part of the contents of such package be abstracted without tearing or destroying such label, or cutting or destroying the wrapper thereof at any other part or place than that on which the label is pasted or secured :
4. Before any cavendish or negrohead tobacco imported and warehoused shall be made into packets or parcels as aforesaid, the same shall be duly entered for home consumption, and the full duty of Customs paid thereon :
5. When any unmanufactured tobacco shall have been manufactured or converted into cavendish or negrohead in the warehouse, the same shall be duly entered for home consumption, and the full duties of Customs shall be paid upon the tobacco so manufactured before the same is made into packets :
6. If any tobacco so manufactured in the warehouse shall not be made into packets for home consumption, the same shall be re-warehoused either for exportation or for future packing, wrapping, and labelling for home consumption, if at any time afterwards required for that purpose :
7. All stalks, waste, and other refuse remaining after and from the manufacture of cavendish or negrohead tobacco in the warehouse or from the packing thereof shall be destroyed in the presence of the proper officer of Customs or be re-warehoused for exportation, at the option of the manufacturer :
8. Every licensed manufacturer shall enter in a book, to be supplied to him by the said Commissioners, in such form and manner as they shall direct, the following and such other particulars as the said Commissioners shall require ; viz.,

The weights, quantities, and particulars of all unmanufactured tobacco and other materials and ingredients received by him into such warehouse for the purpose of being manufactured ;

The weight and quantities thereof consumed in such manufacture ;

The weight, quantities, and particulars of unmanufactured tobacco, materials, ingredients, stalks, waste, and other refuse remaining after or caused by such manufacture ;

The quantity of cavendish or negrohead produced by such manufacture ;

The quantity thereof made up into packets, wrapped, labelled, and delivered for home consumption, with the number of packets of each size or weight respectively ;

The quantity thereof re-warehoused for home consumption or otherwise, and the quantity of tobacco, materials, ingredients, stalks waste, or other refuse returned into the customs ware house to be destroyed ;

Sect. 4.

9. Every such book shall be kept in the warehouse and shall be at all times accessible to the officers of Customs, who may make minutes in or take extracts therefrom; and such manufacturer shall correctly keep such book in the manner required, and shall not cancel or obliterate the same or any part thereof, or make any alteration in any entry therein, except for the correction of any errors, with the sanction and in the presence of the proper officer of Customs:

Penalty for noncompliance with foregoing conditions.

Every licensed manufacturer, dealer, or other person engaged in such warehouse in any of the operations aforesaid who shall refuse or neglect to comply with any of the foregoing conditions, shall for every such offence forfeit the sum of twenty pounds.

Account of stock of tobacco and materials remaining in warehouses to be taken, and balances to be struck.

5. From time to time when and as often as the officer of Customs having charge of any such approved warehouse shall deem it to be necessary or proper, and at least once in every year, the stock of tobacco manufactured and unmanufactured, and all materials and ingredients to be used in such manufacture as aforesaid, remaining in such warehouse, shall be weighed in the presence of the said officer, and an account thereof shall be taken, and a balance shall be struck of all tobacco, materials, and ingredients received into such warehouse, and of all manufactured tobacco and stalks and refuse of tobacco lawfully delivered thereout; and if the quantity by weight of such tobacco, materials, and ingredients remaining in the said warehouse shall be less than the quantity which, according to the balance of such account, after making such allowance for waste by evaporation in the process of manufacture as to the proper officer of Customs may appear reasonable, and as may be in accordance with any rules made by the Commissioners of Customs, ought to be found therein, the deficiency shall be deemed to be so much tobacco fraudulently removed from such warehouse without payment of the duties of Customs thereon, and the said manufacturer shall forfeit the sum of one hundred pounds, and moreover the amount of such duty shall be recoverable as a debt due to Her Majesty.

Deficiency to be deemed tobacco fraudulently removed.

Penalty on sale, etc., of cavendish or negrohead tobacco containing prohibited ingredients and not enclosed and labelled.

6. If any tobacco of either of the descriptions called respectively cavendish and negrohead, whether of foreign or British manufacture, containing or having mixed therewith any material or ingredient prohibited by any Act in force to be used in the manufacture in the United Kingdom of tobacco of the like description, and not being enclosed in a wrapper securely fastened by such label as aforesaid, or of which such wrapper or label shall have been cut or torn, obliterated, or cancelled, or bear any other mark or appearance of having been opened or tampered with, shall be sold or exposed for sale by or be found in the possession of any importer or manufacturer of or dealer in or retailer of tobacco, he shall forfeit either treble the value thereof or the penalty of twenty pounds, and all such tobacco shall be forfeited:

Provided nevertheless, that if any foreign cavendish or negrohead tobacco shall be found in the possession of any manufacturer of or dealer in tobacco, not being so wrapped and labelled as aforesaid, the same shall be forfeited, and such manufacturer of or dealer in tobacco shall forfeit either treble the value thereof or the penalty of twenty pounds, at the election of the Commissioners of Customs or Inland Revenue.

Labels to be provided; and forgery thereof punishable by imprisonment with hard labour.

7. The labels by this Act directed to be provided by the Commissioners of Customs shall be printed or stamped with such device as they shall think proper; and if any person shall forge or counterfeit any such label or the device thereon, or shall utter any such label or device knowing the same to be forged or counterfeited, he shall, on conviction of such offence, be imprisoned in the house of correction, with hard labour, for any term not exceeding six calendar months nor less than three calendar months.

8. If any retail dealer or vendor of any packet of cavendish or negrohead tobacco, labelled as required by this Act, shall fail on the sale thereof to obliterate, before delivery to the purchaser, the label, so as to render the same incapable of being again used for the same purpose, he shall forfeit the penalty of twenty pounds.

Sect. 8.

Penalty on vendors failing to obliterate labels on sale of packets.

9. No cavendish or negrohead tobacco containing the leaves of trees or plants other than of the tobacco plant shall be imported into Great Britain and Ireland, nor shall any cavendish or negrohead tobacco be imported into Great Britain and Ireland, except to be warehoused in the first instance in some warehouse approved by the Commissioners of Customs for security of duties of Customs on tobacco; and if any such cavendish or negrohead tobacco shall be imported contrary hereto, or being imported shall not be forthwith duly entered and warehoused, the same shall be forfeited, and the importer thereof, and every dealer or other person concerned in the importation thereof, or to whose hands the same shall come, shall forfeit either treble the value thereof or the penalty of one hundred pounds, at the election of the Commissioners of Customs.

Cavendish or negrohead tobacco not to be imported with other leaves mixed, nor except to be warehoused.

10. All manufactured tobacco (other than cavendish or negrohead) imported into or found in Great Britain and Ireland containing or having mixed therewith any material or ingredient prohibited by any Act in force to be used in the manufacture in the United Kingdom of tobacco shall be forfeited; and the importer thereof and any dealer or other person concerned in the importation, harbouring, or concealing thereof, or to whose hands the same may come, shall forfeit either the treble value thereof or the penalty of one hundred pounds, at the election of the Commissioners of Customs.

Imported, etc., tobacco (other than cavendish or negrohead) containing prohibited ingredients to be forfeited, etc.

11. [Commissioners of Customs may make rules and regulations for carrying this Act into effect.]

12. [Officers of Customs or Inland Revenue may carry out provisions of this Act.]

30 & 31 Vict. c. 90 (The Revenue Act, 1867)

10. It shall be lawful for any officer of excise at any time (but if between the hours of 11 at night and 5 in the morning then in the presence of a constable or other lawful peace officer) to enter into the premises of every person who shall sell or deal in or shall have taken out a licence to sell or deal in tobacco or snuff and to examine all tobacco or snuff in the premises of such person.

Tobacco and snuff dealers, entry.

19. If any person being a manufacturer or dealer in or retailer of tobacco or snuff shall have in his custody or possession any snuff in which on examination thereof there shall be found to be any quantity of oxides of calcium and magnesium or of either of such oxides exceeding by 10 per cent. the proportion of the quantity of such oxides contained in the tobacco or tobacco-stalks or returns of tobacco from which such snuff shall have been manufactured or shall be in course of manufacture or if any such person shall have in his custody or possession any snuff in which on examination thereof there shall be found any quantity of the said oxides or of either of them exceeding the proportion of 13 lbs. weight of such oxides in every 100 lbs. weight of such snuff he shall forfeit £200 and also the said snuff; provided that any sample of snuff tobacco or tobacco-stalks or returns of tobacco which shall be examined for the purpose of ascertaining the quantity of the said oxides therein shall first be tried at a temperature of 212° as denoted by Fahrenheit's thermometer; and

Excess of oxides of calcium and magnesium.

Sect. 19. for the purpose of this section the term snuff shall include all snuff and all tobacco tobacco-stalks and returns of tobacco which shall be in course of manufacture into snuff.

As to Chicory, by 23 & 24 Vict. c. 113 (the Excise Act, 1860)—

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| Chicory. | 6. The powers and privileges of the Excise Acts are to apply under this Act. |
| Entry of premises. | 8. Dryers and roasters of chicory and dealers therein are to make entry of their premises, and no person other than a dryer of chicory or a roaster thereof or a dealer therein who shall properly have made due entry of his premises in manner aforesaid shall have in his possession any dried chicory exceeding 14 lbs. in weight; and if any such article shall be found in the possession of any person not being such dryer or roaster or dealer as aforesaid the same shall be forfeited. |
| Forfeiture in unentered premises. | |
| Warehouse. | 9. Dryer to provide warehouse for storing—such warehouse shall be locked by two proper officers of excise. |
| Drying chicory. | 10. Dryer to give 6 hours' notice of his intention to dry chicory . . . All chicory found drying upon the premises of any such dryer without such notice as aforesaid shall also be forfeited. |
| Removing. | 11. Dryer to give 6 hours' notice of his intention to remove chicory from kiln. Officer to attend and chicory to be weighed and removed into warehouse in his presence. |
| Undried. | 12. Dryer not to have undried chicory on his premises elsewhere than in his warehouse or in the kiln . . . Any undried chicory which shall be found in any part or place of or in the premises of any such dryer other than such warehouses as aforesaid except as aforesaid shall be forfeited. |
| Scales, etc. | 16. Dryer of chicory to provide scales and weights and assist the officers of excise in using the same. |
| Dried chicory other than that dried in dryer's kiln. | 17. No dryer to have in his possession dried chicory other than such as shall have been dried in his kiln: if any such article as aforesaid which shall not have been dried on his own kiln or lawfully received into his warehouse shall be found on the premises of any such dryer or otherwise in his possession such article shall be forfeited. |
| | 19. Certain acts of removal and receiving allowed under the regulations of the commissioners. |

As to Imitations of Coffee, etc., by 45 and 46 Vict. c. 41 (the Customs and Inland Revenue Act, 1882)—

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| Imitations of coffee, etc., conditions of sale or exposure for sale. | 6. (1.) No article or substance or mixture upon which a duty of excise is imposed by this Act (b) shall be sold or exposed for sale or be offered or kept ready for sale or be delivered out of the custody or possession of any preparer manufacturer or importer thereof except under the following conditions: |
| | (a.) The article or substance or mixture shall be placed in packets each containing $\frac{1}{4}$ lb. or any number of $\frac{1}{4}$ lbs. |
| | (b.) Each such packet shall have affixed thereto a label or labels (which |
| | (b) Any article or substance prepared or manufactured for the purpose of being an imitation of or in any respect to resemble or to serve as a substitute for |
| | coffee or chicory . . . and any mixture of such article or substance as aforesaid with coffee or chicory: s. 5. |

shall not have been before used) denoting the proper amount of duty payable upon such packet according to the weight thereof.

Sect. 6.

(c.) Such label or labels shall be affixed so that the whole thereof shall adhere to the packet so that the packet cannot be opened without tearing or destroying the label or labels.

(d.) Where more than one label is affixed to any packet the labels shall be affixed so that every label shall be wholly or partially visible.

Provided that each such packet containing or purporting to contain coffee with any other article or substance mixed therewith shall have affixed thereto a label in manner hereinafter provided denoting in letters affixed to or imprinted on such label the proper name of the several articles or substances of which such mixture is composed.

(2.) If any person shall sell or expose to sale or offer or keep ready for sale or deliver out of his custody or possession any such article or substance or mixture as aforesaid otherwise than in conformity with the above conditions he shall forfeit the same. Forfeiture for breach of conditions.

7. If any person who shall prepare manufacture sell keep for sale or import any article or substance or mixture upon which a duty of excise is imposed by this Act shall buy receive or have in his possession any label provided under this Act which shall have been before used or any portion of such label (when such label or portion shall be loose or affixed to any packet) . . . every such label or portion shall be seized. Labels.

As to Tea, by 11 Geo. I. c. 30 (the Adulteration of Tea and Coffee Act, 1724)—

5. No dealer in tea or manufacturer or dryer thereof or pretending so to be shall counterfeit or adulterate tea or cause or procure the same to be counterfeited and adulterated or shall alter fabricate or manufacture tea with terra japonica or with any drug or drugs whatsoever nor shall mix or cause or procure to be mixed with tea any leaves other than leaves of tea or other ingredients whatsoever on pain of forfeiting and losing the tea so manufactured, etc., and other thing or things whatsoever added thereto or mixed or used therewith. Tea adulteration.

As to Gun Licences, by 33 & 34 Vict. c. 57 (The Gun Licences Act, 1870)—

9. It shall be lawful for any officer of inland revenue or for any officer of constabulary or any constable to demand from any person using or carrying a gun (not being a person in the naval military or volunteer service of Her Majesty or in the constabulary or other police force using or carrying a gun in the performance of his duty) the production of a licence granted to such person under this Act. If the person upon whom the demand is made shall not produce a licence duly granted to him under this Act or a licence or certificate to kill game granted to him under the laws of excise and permit the officer or constable demanding the production thereof to read such licence or certificate it shall be lawful for such officer or constable to require such person to declare to him immediately his christian and surname and place of residence and if such person shall refuse to declare his christian and surname and place of residence as aforesaid . . . it shall be lawful for such officer or constable to arrest such person so refusing and to convey him before any justice of the peace having jurisdiction. . . . Power to demand licence.
Arrest of person refusing.

Sect. 10. 10. It shall be lawful for any officer of inland revenue officer of constabulary or constable who may see any person using or carrying a gun to enter and remain as long as may be necessary upon any lands or upon any premises (other than a dwelling-house or the curtilage thereof) for the purpose of making the demand specified in the preceding section.

Entry on lands.

As to Hawkers, by 51 & 52 Vict. c. 33 (The Hawkers Act, 1888).

Hawkers

6. (1.) If any person does any act for which a licensee is required by this Act (a.) without having a proper licensee in force in that behalf or (b.) without immediately producing upon demand by any person a proper licensee granted to him or to his master and then in force.

Arrest of offenders.

(3.) Any officer or officer of the peace may arrest a person found committing an offence against this section and convey him before a justice having jurisdiction. . . . (c)

TAXES

Tax collector.

The power of a collector of taxes in case of non-payment of the sum charged by virtue of the Land Tax Acts or the Tax Acts is to distrain upon the messuages, lauds, tenements, and premises charged with such sum of money, or the person so charged by his goods and chattels, and all such other goods and chattels as the collector is thereby authorized to distrain, without any further authority than the warrant delivered on his appointment. (d)

Power of distraint.

The collectors appointed for a year may distrain for duties unpaid although the year has expired, or at least until they have accounted for the duties they have to collect. (e)

Land tax.

As to land tax, by 38 Geo. III. c. 5, s. 17, it is provided that if any person shall refuse or neglect to pay the same the collectors may levy the sum assessed by distress and sale of the goods and chattels of such person . . . or distrain upon the messuages lands tenements and premises so charged . . . and the goods and chattels then and there found and the distress so taken to keep by the space of four days at the costs and charges of the owners and if the said owners do not pay . . . within the said space of four days then the said distress to be appraised by two or more of the inhabitants where the same shall be taken or other sufficient persons and to be sold by the said collectors for payment of the said money and the overplus coming by such sale (if any be) over and above the tax and charges of taking and

(c) As to margarine the power to take samples is the same as that of officers of Customs, see *ante*, p. 100.

(d) 43 & 44 Vict. c. 19, s. 86; and see *R. v. Ford*, 2 A & E. 588.

(e) *Elliott v. Yates*, 1900, 2 Q. B. 370.

keeping the said distress to be immediately returned to the owners thereof. *(f)*

As to the amount that may be charged for such distress Charges. where the tax is £20, see 57 Geo. III. c. 93, s. 1, and 7 & 8 Geo. IV. c. 17. *(g)*

The collector has priority over ordinary judgment creditors, Priority. and over the landlord for rent due. *(h)* Where bankruptcy or Bankruptcy. liquidation supervene, however, the power of distraint vanishes. *(i)* The collector's claim must here be proved in the ordinary way, but is entitled to preferential payment. *(k)*

To authorize a levy a demand of the specific sum must have Demand. been made and payment refused. *(l)*

Constables cannot be introduced unless there be reasonable Introduction of constable. ground to suppose that an assault will be committed or resistance to the distress made. *(m)*

Goods of a third person found on the premises are apparently Goods of third person. seizable. *(n)*

A reasonable time must elapse between the demand and distraint in order to permit of complying with such demand or the distraint will be unlawful. *(o)* So also will it be if it is made for a sum which is not actually due. *(p)* As for land-tax due for rent-charge in lieu of extraordinary tithe. *(q)*

The duties of the collector on seizure will be found stated Duties on seizure. *ante.* *(r)*

These officers collect income and land-tax and house duty.

Proceedings for penalties must be commenced within two years. *(s)*

POST OFFICERS

The power of these officers is principally as to detention and opening of letters. This may be done in the case of a letter Post officers. returned for want of true direction, or if the person to whom it is directed be dead, or cannot be found, or shall have refused the same, *(t)* or if it be suspected to contain contraband goods, *(u)* or is sent contrary to regulations. *(x)*

(f) This Act applies only to E.
(g) *Post*, p. 672.
(h) 43 & 44 Vict. c. 19, s. 88.
(i) *Re Regent Stores*, 38 L. T. 130.
(k) 51 & 52 Vict. c. 62; 1. 35 & 36 Vict. c. 58, s. 69. *Re Henley & Co.*, 48 L. J. Ch. 147.
(l) *R. v. Ford*, *ubi supra*; 42 & 43 Vict. c. 21, s. 25.
(m) *R. v. Clarke*, 3 A. & E. 287.
(n) *Juson v. Dixon*, 1 M. & S. 601.

(o) *Gibbs v. Stead*, 8 B. & C. 528.
(p) *Charlton v. Alcock*, 11 A. & E. 993.
(q) *Curr v. Fowle*, 1893, 1 Q. B. 251.
(r) Page 34.
(s) *Lord Advocate v. Sawers*, 25 R. 242.
(t) 8 Ed. VII. c. 48, s. 17.
(u) S. 18.
(x) S. 16. As to the interception of letters, see s. 54, and *R. v. James*, 24 Q. B. D. 439.

A postmaster is unable to charge for delivery of letters any more than the established rates. (*y*)

Remove
persons ob-
structing
business.

Officers may, after request and refusal to leave, remove persons wilfully obstructing business in a post-office. (*z*)

(*y*) *Smith v. Poudich*, Cowp. 182. These rates are fixed by Treasury warrant: 8 Ed. VII. c. 48, s. 2.

(*z*) S. 67. As to telegraphs, by 26 & 27 Vict. c. 112, s. 6, the postmaster-general may place and maintain telegraphs under or over streets on giving notice to the

local authority (ss. 9, 17), and may alter the position of any pipe—not being a water or gas main—on notice to the owners (s. 8) making compensation for any damage (s. 7). As to the power in highways, see 41 & 42 Vict. c. 76, s. 6.

PART II

THE LOCAL JURISDICTIONS

I. ENGLAND

1. WARRANTS AND ORDERS

THE principal point for consideration in regard to the execution of these warrants and orders is as to the breaking of doors; and the general rule is, that in such cases outer doors cannot be broken.

The Local Jurisdictions, England, Warrants and orders.

In *Semayne's* case it was resolved that (4) "In all cases where the door is open the [officer] may enter the house, and do execution about suit of any subject either on building or on goods. But it is not lawful on request made and denial, at the suit of a common person, to break the defendant's house so as to execute any process at the suit of any subject." (a)

Breaking doors.

If an officer attempt to force his way into a house in execution of civil process, and be resisted and killed, it is manslaughter only. (b)

On the other hand, where a person conceals himself or deposits his goods in the house of a third party, in order to defeat the execution, the doors of such house may be broken.

In the same principal case it is laid down that (5) The house of any one is not a castle or privilege, but for himself, and shall not extend to protect any person who flies to his house, or the goods of any other person which are brought or conveyed into his house, to prevent a lawful execution and to escape the ordinary process of law; and therefore in such case, after denial on request made, the [officer] may break the house. But he does this at his peril; for, if it turn out that the defendant was not in the house, or had no property there, he is a trespasser. (c)

Third person's house.

Officer breaks at peril.

(a) 5 Coke, 91.

(b) 1 East, P. C. 321.

(c) *Johnson v. Leigh*, 1 Marsh. 565; *Cooke v. Birt*, 5 ib. 770.

These rules extend to dwellings only and buildings within the curtilage and not to outhouses. (*d*)

If he be forcibly ejected after lawful entry, he may break open to re-enter. (*e*)

Inner doors.

Having obtained admission, he may break inner doors, although defendant be not therein at the time; (*f*) but he must first demand admittance, (*g*) and cupboards, trunks, etc., may be broken. (*h*)

What a breaking.

If by lifting the latch of the outer door or opening in the ordinary way, he enters, he is justified if he had reasonable ground (*i*) to believe that the execution-debtor or his goods were there. (*k*) The lifting of such a latch or drawing back a sliding bar in the ordinary way, is not a breaking. (*l*)

Entry obtained by fraud.

The house where the execution-debtor resides—that is, where he sleeps—may be considered to be his own house, although he is not the proprietor thereof. (*m*) The entry is not illegal by reason only of being obtained by fraud or deceit. (*n*)

Window.

If a hole in the outer wall be intended for a window or door, the officer is justified in entering, otherwise not. (*o*) If a window be shut, but not fastened, it may not be opened. (*p*)

Breaking out.

Breaking does not affect execution on goods.

The officer being lawfully inside, may break the outer door in order to carry away the goods seized; (*q*) and it has been held that, where a sheriff breaks a house to seize goods, the execution is valid, although he is a trespasser. (*r*)

Arrest on unlawful entry.

If the original entry is unlawful, so is the continuance there, and the officer cannot avail himself of such entry to execute a warrant of arrest. (*s*) An arrest effected by the illegal breaking of a door is altogether void, and renders the officer liable to action not only for the breaking, but also for the assault and false imprisonment. (*t*)

Continuing in possession.

Continuing on premises more than a reasonable time, or beyond that allowed by law, is good ground for an action of trespass, (*u*) and the officer cannot plead justification in such

(*d*) *Penton v. Browne*, Sid. 186; *Hodder v. Williams*, 1895, 2 Q. B. 653.

(*e*) *Eagleton v. Gutteridge*, 11 M. & W. 465.

(*f*) *Lee v. Gansel*, Cowp. 1.

(*g*) *Ratcliffe v. Burton*, 3 B. & P. 223; *Hutchison v. Birch*, 4 Taunt. 619; *Levitt v. Dymoke*, 1 R. 3 C. L. 1.

(*h*) *Lee v. Gansel*, *ubi supra*.

(*i*) See the cases, *ante*, p. 48.

(*k*) *Morrish v. Murray*, 13 M. & W. 57.

(*l*) *Ryan v. Shilcock*, 7 Ex. 72.

(*m*) *Sheers v. Brooks*, 2 H. Bl. 122; see *Levitt v. Dymoke*, *ubi supra*.

(*n*) *R. v. Backhouse*, Loft. 61.

(*o*) *Whalley v. Williamson*, 7 C. & P. 294.

(*p*) *Nash v. Lucas*, L. R. 2 Q. B. 590.

(*q*) *Pugh v. Griffith*, 3 N. & P. 187.

(*r*) *Percival v. Stamp*, 9 Ex. 167.

(*s*) *Hooper v. Lane*, 6 H. L. C. 535; *Humphrey v. Mitchell*, 2 Bing. N. C. 619.

(*t*) *Kerbey v. Denby*, 1 M. & W. 336.

(*u*) *Ash v. Dawson*, 8 Ex. 237.

case. (x) As to the sheriff, if he continue in possession after the return day of the writ he becomes a trespasser *ab initio*, (y) but this will not subject him to the allegation of a new trespass after the acts which he justifies under the execution. (z)

It appears that execution should in these cases take place ^{Time.} only in the daytime, that is exclusive of night and twilight. (a) *Mackallay's* case (b) is usually cited in support of the contrary view, but that case is not quite unexceptionable; it is limited to arrest on mesne process (which is obsolete) and was decided at a peculiar epoch in our law. (c) Execution on a Sunday is not permissible, (d) except in the case of a subsequent arrest after an escape. (e)

Where privilege exists it may be claimed. But this does not ^{Privilege.} concern the officer, (f) except in the case of ambassadors and their servants, and clergymen attending divine service, the arrest of whom is a misdemeanour. (g)

1. OF SUPERIOR COURTS AT COMMON LAW

THE SHERIFF

By 50 & 51 Vict. c. 55, s. 8 (2), the sheriff is required to ^{Sheriff poss. com.} execute writs, and "if he shall find any resistance in such execution he shall take with him the power of the county, and shall go in proper person (h) to do execution, and may arrest the resisters and commit them to prison."

On account of this power a return of rescue is bad. (i)

Every sheriff shall at the expiration of his term of office make ^{Outgoing, duty of.} out and deliver to the incoming sheriff a correct list and account under his hand . . . of all rolls and writs in his hand not wholly executed by him. (k)

The incoming sheriff shall thereupon sign and give to the ^{Incoming.}

(x) *Playfair v. Musgrove*, 14 M. & W. 239.

(y) See *post*, p. 634.

(z) *Aithenhead v. Blades*, 5 Taunt. 198.

(a) Cf. law in S. and I. *post*. In I. no writ of possession can be executed on Christmas-day or Good Friday, nor within two hours before sunset and sunrise or 6 a.m., whichever shall be latest: 11 & 12 Vict. c. 47, s. 1.

(b) 9 Rep. 65.

(c) See *American Co. v. Hendry*, 62 L. J. Q. B. 388.

(d) 29 Car. II. c. 7, s. 6. See *Taylor v. Phillips*, 3 East, 155; *R. v. Myers*, 1 T. R. 266; 1. 7 Will. III. c. 17, s. 7.

(e) *Parker v. Moor*, 2 Salk. 626.

(f) *Tarlton v. Fisher*, 2 Doug. 671; *Magnay v. Burt*, 5 Q. B. 381; *Ames v. Waterlow*, L. R. 5 C. P. 53.

(g) *Ante*, p. 7; 24 & 25 Vict. c. 100, s. 36.

(h) This includes the under-sheriff: *Dalt.* 104. The duties of the *posse com.* in these cases are of a passive nature: *Miller v. Knox*, 6 Sc. 1.

(i) *Wat.* p. 97. Rescue is apparently indictable: see *ante*, p. 27, and *R. v. Walshe*, 1. R. 10 C. L. 511.

(k) S. 28 (1). 1. 5 & 6 Will. IV. c. 55, s. 6. This does not apply after seizure and sale: *Harrison v. Paynter*, 6 M. & W. 387.

outgoing sheriff a duplicate of such account which shall be a good and sufficient discharge to him. (l)

Return to writ. A sheriff shall not be called upon to return to any writ after the expiration of six months from the time he held office. (m) No order to return is now to issue, but a notice is to have the same effect. (n) He must, if required, give a receipt for the writ. (o)

Assistance. *Assistance.*—This writ is used where there has been a decree or order directing chattel property to be given up. (p) The duty of the sheriff is to put the plaintiff in possession of such property. A previous demand is not necessary. (q)

For the fee, see *post*. (r)

Attachment. *Attachment.*—This writ is employed in cases of contempt where the order is by way of process and not punishment, (s) for instance, where a man does not obey an order of the court made in some civil proceeding to do or abstain from doing something—as where an injunction is granted in an action against a defendant and he does not perform what he is ordered to perform. (t)

Delivery. *Delivery.*—This writ issues for the recovery of specific chattel property. If the same cannot be found the sheriff is to distrain the defendant by all his lands and chattels, and the writ is then executed in the same manner as that of *distringas*. (u)

For the sheriff's fee see *post*. (x)

Elegit. *Elegit.*—This writ is employed in the execution of process against the lands of the judgment debtor. (y)

Inquisition. In order to ascertain the lands, the sheriff must hold an inquisition. (z) There is no actual delivery in execution, but on

(l) S. 28 (2).

(m) *Ibid.* (3); *R. v. Jones*, 2 T. R. 1.

(n) Order 52, r. 11 no corresponding rule in I.; and see *Hall v. Ley*, 12 C. D. 795, and *Wells v. Pickman*, 4 R. R. 410. In the case of a special bailiff, as to which see *post*, p. 623, he cannot be ordered to return: *De Moranda v. Dunkin*, 4 T. R. 119.

(o) S. 10 (1).

(p) *Wyman v. Knight*, 39 Ch. D. 165; *Cazet v. Othon*, 23 W. R. 110; *Luther v. Reynolds*, 2 Law Rec. O. S. 499.

(q) Cons. Ord. xxix. 1.

(r) Page 654.

(s) *Re Armstrong*, 1892, 1 Q. B. 327; *Re B.* 1892, 1 Ch. 459; Order xlv., and see *Attachment*, *ante*, p. 9.

(t) *Per Cotton, L.J.*, *O'Shea v. O'Shea*, 15 P. D. 59.

(u) See *post*, p. 237.

(x) Page 654.

(y) 46 & 47 Vict. c. 52, s. 146; Order xliii. I. 12 & 13 Vict. c. 95, s. 3. By I. 13 & 14 Vict. c. 29, s. 1, lands are not to be seized under this writ but by writ of possession.

(z) Co. Litt. 289 b.

the finding of the inquisition the sheriff returns to the writ. (a) What may be taken. The sheriff is to "make and deliver execution unto the party in that behalf suing of all such lands, tenements, rectories, tithes, (b) Lands. rents and hereditaments including lands and hereditaments of copyhold or customary tenure as the person against whom In trust. execution is so sued, or any person in trust for him shall have been seized or possessed of at the time of entering up the said judgment or at any time afterwards or over which such person Subject to appointment. shall at the time of entering up such judgment, or at any time afterwards have any disposing power which he might without the assent of any other person exercise for his own benefit." (c) This includes a mansion-house excepted from the leasing power of a Mansion. tenant for life, estates granted by the Crown for the maintenance Estates granted by Crown. of dignities with reversion to the Crown, (d) land held by a public body for a public purpose, (e) other than that held not for Land of public. the district generally, but for a contributory place, in which case it can only be taken in execution for judgment debts of such place, (f) and a wife's land vested in the husband during the Of wife. coverture. (g) When lands are taken under this writ there is no No interest for subsequent writ. interest in them seizable under a subsequent writ. (h)

As to what may not be taken this includes estates vested in purchasers or mortgagees, (i) an equity of redemption, (k) and as to trust estates it has been held that where land is vested in a long term of years in a trustee in trust to permit a person to receive the rents and profits until default in payment of a rent-charge, or until the person should insure the premises, and in case of such default to pay to a third person out of the rents and profits a certain rent-charge, this was not seizable under an *elegit* against the first *cestui que trust*. (l) But a simple trust estate even for the life of the party is seizable. (m) A benefice Ecclesiastical. including the glebe of a parsonage, a vicarage, or an advowson in gross, or a churchyard cannot be taken, (n) but a bishop's lands probably may be. (o) Rent-arrears, a rent-seck or an office is exempt. For the execution creditor to be entitled to rent it Rent.

(a) *Barnes v. Harding*, 1 C. B. N. S. 568.

(b) As to ecclesiastical execution, see *post*, p. 226.

(c) 1 & 2 Vict. c. 110, s. 11; and see 29 Car. II. c. 3, s. 10, *Sherwood v. Clark*, 15 M. & W. 764, and cf. *Goatley v. Jones*, 1909, 1 Ch. 557.

(d) *Davis v. Marlborough*, 2 Swan. 136.

(e) *Worral Co. v. Lloyd*, L. R. 1 C. P. 719.

(f) *Jersey v. Uzbridge*, 55 J. P. 165.

P.O.

(g) Dalt. 136; and see *post*, p. 233.

(h) *Carter v. Hughes*, 2 H. & N. 714.

(i) 18 & 19 Vict. c. 15, s. 11.

(k) *Lyster v. Dolland*, 1 Ves. 431; *Plunket v. Penson*, 2 Atk. 292.

(l) *Hull v. Greenhill*, 4 B. & Ald. 684.

As to friendly societies see *post*, p. 232.

(m) *Scott v. Scholey*, 8 East, 485; *Hele v. Bezley*, 17 Beav. 14.

(n) Wat. p. 309. *Parry v. Jones*, 1 C. B. N. S. 345.

(o) Dalt. p. 136.

must be due before the delivery of the writ to the sheriff. (*p*) But a tenant need not attorn in order for the plaintiff to sue for rent subsequently accruing. (*q*) A remainder or reversion is not seizable. (*r*)

The sheriff must make a return, (*s*) where anything has been done under the writ. (*t*) But such return is not necessary to complete seizure under sect. 45 of the Bankruptcy Act, 1883. (*u*)

There is no sale under this writ. (*x*)

For the fees payable, see *post*. (*y*) The poundage is £5 per cent. on the first £100, and £2½ per cent. afterwards, (*z*) and this is confined to the yearly value. (*a*)

Fieri Facias. *Fieri Facias*.—This writ is employed in execution on the goods of the judgment debtor.

Where the sheriff returns that the defendant is a beneficed clerk and has no goods or chattels or any lay fee in his bailiwick, a like writ is directed to the bishop for execution. (*b*) The creditor in this case must exhaust the temporal before recourse to the spiritual goods. (*c*) The liability of the bishop is the same as that of the sheriff. (*d*)

Where more than one writ is in the sheriff's hands he must execute that which was first delivered to him, (*e*) unless fraudulent, and in that case execute the other or others. (*f*) The fraction of a day is sufficient to give priority. (*g*) An execution levied by a special bailiff on a subsequent writ may be recovered by the sheriff as received to his use. (*h*) But if he is directed not to execute the first writ until a future day, he may execute another delivered before that day. (*i*) If after execution of the first there is a surplus, this must be applied to the second and so on. (*k*) Where a writ is renewed it is entitled to priority from the time of the original delivery; (*l*) but while it is withdrawn

(*p*) *Sharp v. Key*, 8 M. & W. 379.

(*q*) *Lloyd v. Davies*, 2 Ex. 103.

(*r*) *In re South*, L. R. 9 Ch. 369. See *Johns v. Pink*, 81 L. T. 712.

(*s*) See *ante*, p. 224.

(*t*) *Iloc*, 5 Rep. 90 a.

(*u*) *Re Hobson*, 2 Ti. Rep. 884. This section denies to creditors the benefit of an execution unless it is completed before bankruptcy.

(*x*) Co. Litt. 289 b.

(*y*) Page 654.

(*z*) 29 Eliz. c. 4.

(*a*) *Nash v. Allen*, 1 Dav. & M. 16; *Tyson v. Paske*, 2 Id. Ray. 1212.

(*b*) Order 43, r. 3. Not applicable to I.

(*c*) *Bromage v. Vaughan*, 7 Ex. 223.

(*d*) *Wulwyn v. Awberry*, 2 Mod. 257;

Pickard v. Paiton, 1 Sid. 276. In the event of a vacancy in the see, the writ goes to the archbishop.

(*e*) *Hutchinson v. Johnston*, 1 T. R. 729. As to when a writ is executed see *Pirie v. Stewart*, 1899, 2 I. R. 546.

(*f*) *Bradley v. Wyndham*, 1 Wils. 44; *Christopherson v. Burton*, 3 Ex. 160.

(*g*) *Smalcomb v. Buckingham*, Carth. 419; see *Clarke v. Bradlaugh*, 8 Q. B. D. 63.

(*h*) *Suele v. Paynter*, 1 D. & Ry. 307.

(*i*) *Kempland v. Macaulay*, Peake N. P. C. 95; *Hunt v. Hooper*, 1 D. & L. 626;

Kirwan v. Jennings, 3 C. L. Ir. 48.

(*k*) *Aldred v. Constable*, 6 Q. B. 370.

(*l*) Order 42, r. 20.

he cannot enter without further instructions from the execution creditor, and may execute a subsequent writ without notice to such creditor. (*m*)

The writ must agree with the judgment in the mandatory part. (*n*) Writ to agree with judgment.

If the debtor die after the writ has issued, execution may be levied on goods in the hands of the executor. (*o*) The death of the execution creditor after the issue of the writ will not affect the execution. (*p*) Death of debtor.
Of creditor.

The duty of the sheriff is to seize only as much as will satisfy the writ together with poundage fees and expenses, (*q*) and interest where it is for the recovery of money at the rate of £4 per cent. from the judgment or more where agreed on. (*r*) The sheriff must on seizure leave a man in possession until the sale takes place, (*s*) which must be within a reasonable time. (*t*) A seizure of part in the name of the whole is good. (*u*) The defendant instead of allowing the writ to be executed may pay the debt and costs; (*x*) a tender before seizure is equivalent to payment. (*y*) Duty of sheriff.
Payment.

Where a judgment is against partners execution may issue against (*a*.) any property of the partnership within the jurisdiction, (*b*.) any person who has appeared or admitted to be or been adjudged a partner or (*c*.) has been served as a partner with a writ and failed to appear. (*z*) The sheriff can only sell such assets as are seizable, not book-debts or goodwill. (*a*) No writ of execution against partnership property can now issue for a partner's separate debt. (*b*) Partners.

Where an insufficient levy is made, there may be a further levy under the same writ, or a second writ may issue. (*c*) Further levy.

All goods and chattels, with certain exceptions, may be seized, provided they can be sold, (*d*) including corn, potatoes and other crops which yield an annual profit. (*e*) But where growing crops What may be taken.
Corn, etc.

(*m*) *Shaw v. Kirby*, 52 J. P. 182.

(*n*) *Webber v. Hutchins*, 8 M. & W. 319.

(*o*) *Ranken v. Harwood*, 10 Jur. 794;

Wright v. Mills, 28 L. J. Ex. 223. See

Waghorne v. Longmead, 4 R. R. 739;

Bolingbroke v. Kerr, L. R. 1 Ex. 222;

Abbott v. Purfitt, L. R. 6 Q. B. 346.

(*p*) *Thoroughgood*, Noy. 73.

(*q*) 15 & 16 Vict. c. 76, s. 123. I. 6

Anne c. 7, s. 3; *Yates v. Meehan*, 11 C. L.

Ir. App. 1; *Byrne v. Hutchinson*, 1 R. 9

C. L. 75.

(*r*) Order 42, r. 16.

(*s*) *Blakes v. Arundale*, 1 M. & S. 711.

(*t*) *Bales v. Wingfield*, 2 N. & M. 831.

(*u*) *Gladstone v. Padwick*, L. R. 6 Ex. 203.

(*x*) *Taylor v. Bekon*, 2 Lev. 203.

(*y*) *Colls v. Coates*, 11 A. & E. 826; 3 P. & D. 511.

(*z*) Order xlviii. A, r. 8. I. O. 42, r. 10. *Harris v. Beauchamp*, 1893, 2 Q. B. 534.

(*a*) *Helmors v. Smith*, 36 W. R. 3; cf. *Perens v. Johnson*, 3 Sm. & G. 419.

(*b*) 53 & 54 Vict. c. 39, s. 23.

(*c*) *Jordan v. Binches*, 18 L. J. Q. B. 277; *Harmer v. Johnson*, 14 M. & W. 336.

(*d*) *Francis v. Nash*, Ca. t. Hard. 53;

Legg v. Evans, 6 M. & W. 41.

(*e*) 2 Gilb. Ex. 19; *Wat. p.* 253.

Money.

had been seized and a writ of possession was subsequently delivered to the sheriff in ejectment at the suit of the landlord founded on a demise made long before the issue of the *fi. fa.* the sheriff was not bound to sell them as they could not be considered as belonging to the tenant. (*f*) As to money it is laid down by 1 & 2 Vict. c. 110, s. 12, that the sheriff or his officer "may and shall seize (*g*) and take any money, (*h*) or bank notes (whether of the Bank of England or otherwise), and any cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money, (*i*) belonging to the person against whose effects such writ of *fi. fa.* shall be sued out, and may and shall pay or deliver to the party suing out such execution any money or bank notes which shall be so seized or a sufficient part thereof, and may and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money as a security or securities for the amount by such writ of *fi. fa.*, directed to be levied and raised," and after providing for the manner of recovery, continues, "and may and shall pay over to the party suing out such writ the money so to be recovered, or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied, and if after satisfaction of the amount so to be levied together with sheriff's poundage and expenses any surplus shall remain in the hands of such sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued."

Ship.

In the case of a ship, seizure before sale is apparently not necessary. (*k*) Where Admiralty process exists there can *seemle* be neither seizure nor sale. (*l*)

Lease.

Chattel interests such as leases for years are seizable; (*m*) but a tenant cannot be turned out of possession when he has taken a term, under an execution against the landlord, (*n*) nor to give

(*f*) *Hodgson v. Gascoigne*, 5 B. & A. 88. Otherwise in I. under the landlords statutable ejectment for non-payment of rent: *Russell v. Moore*, 8 L. R. I. 332.

(*g*) Where no seizure took place in the debtor's lifetime the claim of the execution creditor was postponed to that of the trustee in bankruptcy: *Johnson v. Pickering*, 1908, 1 K. B. 1.

(*h*) This does not extend to a mere debt: *Wood v. Wood*, 4 Q. B. 397; *Harrison v. Paynter*, 6 M. & W. 387. I. 3 & 4 Vict. c. 105, s. 20; 16 & 17 Vict. c. 113, s. 131.

(*i*) This does not include title-deeds, but a policy of insurance may be taken on the life of another: *Luo v. London Co.* 1 K. &

J. 223; *Stokoe v. Cowen*, 29 Beav. 637, but not on the debtor's own life: *Alleyne v. Darcy*, 5 Ir. Ch. R. 56; *Re Sargent's Trusts*, 7 L. R. I. 66, and pawnbroker's pledges: *Re Rollason*, 34 Ch. D. 495.

(*k*) *Harley v. Harley*, 11 Ir. Ch. R. 451.

(*l*) *Ladbroke v. Crickett*, 2 T. R. 649. See Order xlii. r. 29. I. r. 31.

(*m*) Com. Dig. Execution. *Doherty v. Nelson*, 1895, 2 I. R. 90. In I. no freehold or equitable interest can be taken—*Griffin v. Caddell*, I. R. 9 C. L. 488; *Rico v. McQuade*, *ib.* 101; *Tener v. Booth*, Ir. Cir. R. 625; *O'Riordan v. Kelly*, 16 L. R. I. 263.

(*n*) *Taylor v. Cole*, 3 T. R. 292.

place to a purchaser. (o) As to fixtures, those which may be removed by the tenant during his term may be seized and sold in execution against him, but not as against the freeholder who is also the occupier, (p) and these include arras hangings, (q) barn on blocks, (r) beds fastened to ceiling, (s) bins, (t) blinds, (u) book cases, (x) buildings on blocks, rollers, pillars, etc., (y) cabinets, (z) chimney backs, (a) glasses, (b) and pieces, (c) cider mills, (d) cisterns, (e) clock cases, (f) coffee mills, (g) colliery machines, (h) cooling coppers, (i) counters, (k) coppers, (l) cranes, (m) cupboards, (n) desks and drawers, (o) dutch barns, (p) engines, fire engines, (q) furnaces, (r) furniture, fixtures put up as, (s) gas pipes, glass fronts, (t) grates, (u) hangings, (x) iron chests, (y) and malt mills, (z) ovens, (a) safes, (b) jacks, (c) lamps, (d) looking-glasses, (e) machinery let into cups or sets of timber, (f) or capable of removal without damage to building, (g) mash-tubs, (h) mills and posts or erections on brick foundations, (i) partitions, (k) pattens, erection on, (l) pier-glasses, pictures, (m) plant and pipes of brewers, distillers, etc., (n) presses, (o) pumps slightly attached, (p) rails laid down by lessee, (q) ranges, (r) reservoirs, (s) shelves, sinks, shrubs planted for sale, (t) stoves, (u) stuffed birds in cases, (x) tapestry, (y) tubs, (z) turret

(o) *R. v. Deane*, Show. 402; see *Burden v. Kennedy*, 3 Atk. 739.

(p) *Winn v. Ingilby*, 5 B. & A. 625; *Place v. Fagg*, 4 M. & Ry. 281. I. see 23 & 24 Vict. c. 154, s. 17.

(q) *Sewell*, p. 231.

(r) *Culling v. Tuffnal*, Bull N. P. 3.

(s) *Ex parte Quincy*, 1 Atk. 477.

(t) Am. & Fer. (*Fixtures*), 3rd ed.

(u) *Colegrave v. Dias Santos*, 2 B. & C. 76.

(x) Am. & Fer. 325.

(y) *Elwes v. Maw*, 3 East, 38; 2 S. L. C. 182.

(z) *Birch v. Dawson*, *inf.*

(a) *Harvey v. Harvey*, 2 Str. 1141.

(b) *Beck v. Rebow*, 1 P. Wms. 94.

(c) *Leach v. Thomas*, 7 C. & P. 328.

(d) *Lawton v. Lawton*, 2 Atk. 12.

(e) Am. & Fer. 4.

(f) 4 Burn. Ecc. Law, 7th ed. 301.

(g) *R. v. Londonthorpe*, 6 T. R. 377.

(h) See note (d).

(i) See note (u).

(k) Am. & Fer. 15.

(l) *Poole*, 1 Salk. 368.

(m) Am. & Fer. 12.

(n) *R. v. St. Dunstan*, 4 B. & C. 686.

(o) Am. & Fer. 409.

(p) *Dian v. Allalley*, 3 Esp. 11.

(q) *Dudley v. Ward*, Amb. 113; *Whithead v. Bennett*, 27 L. J. Ch. 474.

(r) *Squier v. Mayer*, 2 Free. 249.

(s) *Birch v. Dawson*, 2 Ad. & E. 37.

(t) Am. & Fer. 243, 290.

(u) *Lee v. Risdon*, 7 Taunt. 191.

(x) See note (a).

(y) See note (g).

(z) See note (f).

(a) Am. & Fer. 395.

(b) *Ib.* 409.

(c) *Ib.* 247.

(d) *Davis v. Jones*, 2 B. & Ald. 165.

(e) See note (s).

(f) *Colegrave v. Dias Santos*, *ubi sup.*; cf. *Reynolds v. Ashby*, 1904, A. C. 466; and *Crossley v. Lee*, 1908, 1 K. B. 86.

(g) *Ward*, 4 Leon. 241.

(h) See note (f).

(i) *Ward*, *ubi sup.*

(k) *Poole*, *ubi sup.*

(l) *Naylor v. Collinge*, 1 Taunt. 19.

(m) *Beck v. Rebow*, *ubi sup.*

(n) *Lawton v. Lawton*, *ubi supra*.

(o) *Birch v. Dawson*, *sup.*

(p) *Grymes v. Boweren*, 6 Bing. 437.

(q) *Antrim v. Dolbs*, 30 L. R. Ir. 424.

(r) *Birch v. Dawson*, *sup.*

(s) See note (p).

(t) *Penton v. Robart*, *inf.*

(u) *R. v. St. Dunstan*, *ubi sup.*

(x) *Hill v. Bullock*, 1897, 2 Ch. 482.

(y) *Harvey v. Harvey*, *ubi sup.*; *Leigh v. Taylor*, 1902, A. C. 157; see *Re Whaley*, 1908, 1 Ch. 615.

(z) *Colegrave v. Dias Santos*, *ubi sup.*

clocks, (a) vessels on brickwork, (b) varnish houses, (c) vats and utensils used for trade, (d) wainscot fixed by screws, (e) and window-sashes not beaded into frames. (f)

Under the Agricultural Holdings Act, engines, machinery, fencing, etc., erected by the tenant on such a holding are *prima facie* his property, and therefore liable to be taken in execution against him, (g) provided that all rent is paid, the removal does not cause any avoidable damage, and the damage occasioned is made good, and the landlord on a month's notice, elects not to purchase the same. (h)

What may not
be taken.

Necessaries.

Farm stuffs.

Crops produced
without
labour.

Goods not
defendant's.

As to what may not be taken, it appears that actual necessities such as tools, bedding, etc., to the value of £5 are exempt, (i) and clothes in actual use, (k) as also is straw threshed or unthreshed, or any straw of crops growing, or any chaff colder, or turnips, or manure, compost ashes or seaweed in any case whatever, or hay, grass or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables being produce of such lands in any case where according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, etc., ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon, and of which covenants or agreements such sheriff or other officer shall have received a written notice before he shall have proceeded to sale. (l) Things which yield no annual profit, or which are produced without man's labour (m)—clover, rye or artificial grass growing under corn, and meadow grass or fruit growing—are exempt. (n) So also are goods which do not actually belong to the defendant, (o) or which have passed without fraud under a bill of sale. (p) These must be registered to be valid within seven days of execution. (q)

(a) Am. & Fer. 247.

(b) *Horn v. Baker*, 9 East, 215.

(c) *Penton v. Robert*, 2 East, 88. See *Mears v. Callender*, 1901, 2 Ch. 388.

(d) *Whitehead v. Bennett*, *ubi sup.*

(e) See note (n).

(f) *R. v. Hedges*, 1 Leach, C. C. 201; 2 East, P. C. 590.

(g) 8 Ed. VII. c. 28, s. 21. I. see 33 & 34 Vict. c. 46, ss. 1, 2, 4. As to market gardens see 8 Ed. VII. c. 28, s. 42, and *Mears v. Callender*, 84 L. T. 618.

(h) See also as to compensation for damage by game, s. 10, and for unreasonable disturbance, s. 11.

(i) 8 & 9 Viet. c. 127, s. 8. I. 11 & 12 Vict. c. 28, s. 9. *Re Dawson*, 1899, 2 Q. B. 54; *Davis v. Harris*, *post*, p. 242. As

to execution against the property of a soldier see 44 & 45 Vict. c. 58, s. 144. As to instruments of hosiery-workmen 6 & 7 Viet. c. 40, s. 18.

(k) *Hardistey v. Barney*, Comb. 356.

(l) 56 Geo. III. c. 50, ss. 1, 8. E.

(m) 2 Gilb. Ex. 19.

(n) Wat. 253.

(o) *Glasspoole v. Young*, 9 B. & C. 696; *Dawson v. Wood*, 3 Taunt. 256; *Edwards v. Bridges*, 2 Stark, 396.

(p) *Glasspoole v. Young*, *ubi supra*, and see *Richards v. Johnston*, 4 H. & N. 660.

(q) 45 & 46 Vict. c. 43, s. 8, and re-registered every five years, s. 11. It cannot assign after-acquired property, s. 5—nor be for less than £30, s. 12. I. 42 & 43 Vict. c. 50, ss. 8, 10.

And in these cases the sheriff is not bound to interplead, but is at liberty to withdraw, though the value of the goods seized exceed the sum secured by the bill of sale. (r) As to what assignments are valid, with regard to the debtor himself and all persons claiming through him (other than purchasers) the goods are bound from the *teste* of the writ. (s) A grant of goods not in existence or not belonging to the debtor when he executed the deed is good if it purport to pass the property. (t) When taken possession of by the grantee (u) it is not subject to an execution against the debtor. (x) Purchasers are only bound from the time of delivery of the writ to the sheriff and the officer must indorse thereon the exact time of receipt. (y) But if the assignment be made fraudulently to delay, hinder, and defraud creditors before such delivery it will be void. (z) Here the intent must be proved and the fact that creditors are delayed is not conclusive. (a) Future creditors are within the Act if the intent to delay be clear. (b) The fact that there was no valuable consideration or none at all is evidence of fraud. (c) But a sale for good consideration is not void merely if made to defeat an expected execution. (d) Nor a *bonâ fide* assignment for the benefit of creditors (e) or from which some creditors are intentionally excluded. (f)

Landlords' fixtures are also exempt. These are agricultural **Fixtures.** erections, (g) alehouse bar, (h) barns fixed, (i) beast-house, (k) bench, (l) boilers built in, (m) box border, (n) carpenter's shop, earth-house, (o) chimney pieces, (p) cornices affixed, (q) conservatories, (r) doors, dressers, (s) fold-yard walls, (t) fruit trees and shrubs, (u) fruit-houses, (x) glasses in pannels fixed, (y) windows, (z)

(r) *Scarlett v. Hanson*, 12 Q. B. D. 213.
(s) *Houghton v. Rushby*, Skin. 257; *Exp. Williams*, L. R. 7 Ch. 317.

(t) *Lazarus v. Andrade*, 5 C. P. D. 318;
Clements v. Mathews, 11 Q. B. D. 808;
Official Receiver v. Tailby, 18 ib. 25.

(u) *Reece v. Whitmore*, 32 L. J. Ch. 497; *Carr v. Allatt*, 27 L. J. Ex. 385.

(x) *Chidell v. Galsworthy*, 6 C. B. N. S. 471; *Brown v. Bateman*, L. R. 2 C. P. 272;
Reeves v. Barlow, 12 Q. B. D. 436.

(y) 56 & 57 Vict. c. 71, s. 26; see
Hobson v. Theilsson, L. R. 2 Q. B. 642.

(z) 13 Eliz. c. 5; *Twyne*, 3 Rep. 80 b.

(a) *Ex p. Mercer*, 17 Q. B. D. 290;
Godfrey v. Poole, 13 A. C. 497.

(b) *Spiro v. Wilsons*, 3 D. J. & S. 293;
Ridler v. Ridler, 22 Ch. D. 74.

(c) *Gale v. Williamson*, 8 M. & W. 405.

(d) *Wood v. Dixie*, 7 Q. B. 892; *Holbird v. Anderson*, 5 T. R. 235. See *Re Moroney*, 21 L. R. 1. 27.

(e) *Alton v. Harrison*, L. R. 4 Ch. 622;
Allen v. Bonnett, L. R. 5 Ch. 577.

(f) *Muskelyne v. Smith*, 1902, 2 K. B. 158.

(g) *Elwes v. Maw*, *ubi sup.*

(h) *Kinlowside v. Thornton*, 2 W. Bl. 1111.

(i) See note (g).

(k) *Ibid.*

(l) *Am. & Fer.*, 3rd ed. 105.

(m) *Jenkins v. Gething*, 2 J. & H. 520.

(n) *Empson v. Soden*, 1 N. & M. 720.

(o) See note (g).

(p) *Poole*, 1 Salk. 368.

(q) *Avery v. Chesslyn*, 3 Ad. & E. 75.

(r) *Buckland v. Butterfield*, 4 Moo. 440.

(s) See note (h).

(t) See note (g).

(u) *Wyndham v. Way*, 4 Taunt. 316.

(x) See note (g).

(y) *Allen v. Allen*, Mose, 112.

(z) 4 Co. Rep. 64 a.

grates, (a) hearth, (b) keys and locks, (c) ladders fixed, (d) limekilns, (e) machinery, moveable part essential to fixture, (f) mill machinery or stone, (g) ovens, (h) partitions, (i) pillars on a dairy floor, (k) pinceries fixed, (l) pump-house, (m) ranges and set-pots, (n) racks in stables, (o) salt-pans, (p) slabs of marble, statues, vases, part of design, fixed, (q) strawberry beds, (r) tapestry fixed, (s) wagon-house, (t) windmills. (u)

The tenant may renounce his right to remove his fixtures, and, in that case, they could not be taken. (x) If he mortgage them, the mortgagee may enter and seize them (y) during the tenancy. (z)

Friendly society.

If money or property be in the hands of an officer of a friendly society by virtue of his office and be seized, it must be delivered up on the written demand of the trustees or other persons authorized to demand it by the society. (a)

Goods held as security.

Goods deposited as a security for a debt are not seizable, (b) nor those which are held by way of lien. (c) Nor money in the

In trust.

hands of a trustee for the debtor, (d) or of an auctioneer properly employed by him; (e) nor that left with the sheriff in part pay-

Goods sold or lent.

ment of the debt, (f) or with another sheriff. (g). Money levied by the sheriff is not seizable under a writ against the creditor. (h) Cut grass in the possession of a debtor, but sold by him before execution, is not seizable, (i) nor goods lent on hire; but the owner of such goods must, in this instance, inform the sheriff on seizure that they are lent for a term only; (k) and in that case

With executor. the sheriff can only seize the interest of the debtor. (l) Goods of

(a) *Lee v. Risdon*, 7 Taunt. 191;

Richardson v. Ardley, 38 L. J. Ch. 508.

(b) See note (g).

(c) *St. John v. Piott*, 2 Bul. 103.

(d) *Wilde v. Waters*, 16 C. B. 637.

(e) *Thresher v. E. London Waterworks*, 2 B. & C. 608; *Cosby v. Shaw*, 19 L. R. Ir. 307.

(f) *Mather v. Fraser*, 25 L. J. Ch. 361.

(g) *Farrant v. Thompson*, 5 B. & A. 826.

(h) *Winn v. Ingilby*, 5 B. & Ald. 625.

(i) *Kinlyside v. Thornton*, 2 Bl. 1111.

(k) *Leach v. Thomas*, 7 C. & P. 328.

(l) See note (r).

(m) *Elvcs v. Maw*, *ubi sup.*

(n) See note (h).

(o) 2 Vent. 214.

(p) *Lawton v. Salmon*, 1 H. Bl. 260 n.

(q) See note (y), *sup.*

(r) *Watherell v. Howells*, 1 Camp. 227.

(s) *D'Eyncourt v. Gregory*, L. R. 3 Eq. 382.

(t) See note (m).

(u) *Steward v. Lombe*, 4 Moo. 285; *R.*

v. Otley, 1 B. & Ad. 161.

(x) *Dumergue v. Rumsey*, 2 H. & C. 777.

(y) *London Co. v. Drake*, 6 C. B. N. S. 798.

(z) *Wooton v. Woodcock*, 7 M. & W. 14; *Smith v. Render*, 27 L. J. Ex. 83.

(a) 59 & 60 Vict. c. 25, s. 35.

(b) *Rogers v. Kennay*, 9 Q. B. 592.

(c) *Legg v. Evans*, 6 M. & W. 36.

(d) *France v. Campbell*, 6 Jur. 105.

(e) *Brown v. Perrott*, 4 Beav. 585.

(f) *Brun v. Hutchinson*, 13 L. J. Q. B. 244.

(g) *Masters v. Stanley*, 8 Dow. 169.

(h) *Wood v. Wood*, 12 L. J. Q. B. 141.

Otherwise in L. 40 & 41 Vict. c. 56, s. 62;

O'Malley v. Brabazon, 15 L. R. I. 561;

Croghan v. Maffett, 28 ib. 97.

(i) *Tompkinson v. Russell*, 9 Price, 287.

(k) *Dean v. Whittaker*, 1 C. & P. 347.

(l) *Gordon v. Harper*, 7 T. R. 9; see

Ward v. Macauley, 4 ib. 489. Mere possession is not seizable, *Kearney v. Ryan*, 2 L. R. I. 61.

a testator in the hands of an executor are exempt under a writ against such executor. (m)

As to husband and wife, since the Married Woman's Property Act, 1882, their property respectively continues separate in the absence of settlement. By sect. 14 a husband is liable for the debts of his wife, and for all contracts entered into, and for all wrongs committed by her before marriage, including any liabilities to which she may be subject under the Companies Acts to the extent of all property whatsoever belonging to her which he shall have acquired or become entitled to from or through her, after deducting therefrom any payments made by him and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law in respect of any such debts, contracts, or wrong, for or in respect of which his wife was liable before her marriage. (n) Personal chattels bequeathed to a woman for her separate use are not seizable for the husband's debt. (o) But a husband who succeeds to his wife's property in his marital right is liable in respect of her separate estate to the same extent as she would be if living. (p)

By 8 Ed. VII. c. 69, s. 211, where any company is being wound up by or subject to the supervision of the court, any execution put in force (q) against the estate or effects of the said company after the commencement of the said winding-up shall be void. Except by leave of the Court. (r) Where the sheriff was in possession before, but received moneys after the commencement of the winding-up, he was ordered to account to the liquidator for all moneys so received. (s)

By 30 & 31 Vict. c. 127, s. 4, the engines, tenders, carriages, trucks, machinery, tools, fittings, materials, and effects, constituting the rolling-stock and plant used or provided by a company for the purposes of the traffic on their railway, or of their stations or workshops shall not, after their railway, or any part thereof, is open for public traffic, be liable to be taken in execution. And this includes the case of plant going over to the contractor on completion of the line. (t)

A cost-book mining company is a partnership only. (u)

(m) *Farr v. Newman*, 4 T. R. 621, see *Whale v. Booth*, *ib.* 625 n.

(n) 45 & 46 Vict. c. 75.

(o) *Newlands v. Paynter*, 4 M & Cr. 408.

(p) See *Pelton v. Harrison*, 1891, 2 Q. B. 422.

(q) See *In re Lond. v. Devon Co.*, L. R. 12 Eq. 190.

(r) S. 142; see *Westbury v. Twigg* 1892, 1 Q. B. 77. *Allan v. Cowan*, 20 R. 36. As to S. see s. 213.

(s) *In re The Opera, Limited*, 64 L. T. 313.

(t) *Beeston v. Marriott*, 4 Giff. 436; see *G. N. Ry. v. Tahourdin*, 13 Q. B. D. 320.

(u) 1 Lind. 4th ed. p. 694; see *ante*, p. 227.

Taxes.

Where taxes are in arrear the goods are not seizable unless the execution creditor before sale or removal pays the collector such arrears, provided they be not claimed for more than one year. (x)

Rent.

Where rent is in arrear the goods cannot be taken unless before removal such arrear be paid to the landlord, provided the claim be not for more than one year. (y) And this is extended in the case of weekly tenements, or in that of any term less than a year to four such terms; (z) and applies also to the case of growing crops. (a) Where a tenant's fixtures become the property of the landlord by the terms of the Agricultural Holdings Act not having been complied with, (b) they cannot be seized in execution against the tenant. As to the above-cited statute of Anne, it has been held not to apply to a ground landlord, (c) but it does to a lessee and under-tenant. (d) It also applies to fore-hand rents. (e) The tenancy must be actually in existence at the time of seizure, (f) but the claim of the landlord is confined to rent due at that time. (g) The sheriff must have notice of such claim while the goods are in his hands, (h) or knowledge thereof, which is equivalent thereto. (i) The goods must be actually removed for the Act to apply, (k) but the fact that a sufficient distress remained is no defence. (l) In such case the sheriff's duty is to withdraw, (m) unless the landlord's agent takes from the officer an undertaking and consents to the sale. (n)

Sheriff to withdraw unless landlord take undertaking.

The sheriff must inquire into the *bonâ fides* of the claim; (o) but the execution-creditor, if he assents to the proceedings, cannot afterwards turn round if a mistake has been made. (p)

Venditioni exponas.

Venditioni Exponas.—This writ is in aid of that of *fi. fa.*, and is a command to the sheriff to sell the goods. (q) On receipt

(x) 43 & 44 Vict. c. 19, s. 88 (1). As to local rates, see *Marylebone Vestry v. London Sheriff*, 1900, 2 Q. B. 591.

(y) 8 Anne c. 14, s. 1. [1. 9 Anne c. 8, s. 1.] See *Forster v. Cookson*, 1 Q. B. 419, and *Waldron v. Sutcliffe*, 26 L. R. Ir. 444.

(z) 7 & 8 Vict. c. 96, s. 67. A supervening bankruptcy does not affect the landlord's right—*Re Neil Mackenzie*, 1899, 2 Q. B. 566.

(a) 14 & 15 Vict. c. 25, s. 2.

(b) 8 Ed. VII. c. 28, s. 21, see *ante*, p. 230.

(c) *Bennett*, Stra. 787.

(d) *Thurgood v. Richardson*, 7 Bing. 428.

(e) *Harrison v. Barry*, 7 Price, 690; *Yates v. Ratledge*, 29 L. J. Ex. 117.

(f) *Cox v. Leigh*, L. R. 9 Q. B. 333.

(g) *Reynolds v. Barford*, 7 M. & G. 449; *Re Davis*, 54 L. T. 304.

(h) *Arnitt v. Garnett*, 3 B. & Ald. 440. *Dixon v. Wilks*, 9 Ir. C. L. 467.

(i) *Andrews v. Dixon*, 3 B. & Ald. 645.

See *Davidson v. Allen*, 20 L. R. Ir. 16.

(k) *White v. Binstead*, 13 C. B. 304.

(l) *Colyer v. Speer*, 2 B. & B. 67.

(m) *Foster v. Hilton*, 1 Dow. 35; *Cocker v. Musgrove*, 9 Q. B. 223; *Allen v. Lloyd*, 2 Ir. C. L. 53.

(n) *Rothercy v. Wood*, 3 Camp. 24.

(o) *Frost v. Barclay*, 3 Ti. Rep. 617.

(p) *Stuart v. Whittaker*, Ry. & M. 310.

(q) *Cameron v. Reynolds*, Cowp. 406.

thereof it is his duty to sell for as much as he is able. (r) He ought not to delay sale until the issue of this writ. (s)

By 53 & 54 Vict. c. 71, s. 11: (t) (1) Where the goods of a Bankruptcy debtor are taken in execution, and before the sale thereof, or the completion of the execution (u) by the receipt or recovery of the full amount of the levy, notice is served on the sheriff (x) that a receiving order has been made against the debtor, the sheriff shall on request (y) deliver the goods, and any money seized or received in part satisfaction of the execution, to the official receiver or trustee under the order, but the costs of the execution (z) shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge. (2) Where under an execution in respect of a judgment for a sum exceeding £20, (a) the goods of a debtor are sold, or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution (b) from the proceeds of the sale or the money paid, and retain the balance for fourteen days; (c) and if within that time notice is served on him (d) of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver, or as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

The section is not applicable where the sheriff has on the representation of the debtor quitted the premises and thus given up possession. (e) It has not deprived the landlord of his rights under 8 Anne, c. 14, s. 1. (f)

Where the sheriff is in possession under several writs, and receives notice as above, only those writs are entitled to be paid which are for less than £20, and which would have been paid had

(r) *Keightley v. Birch*, 3 Camp. 524.

(s) *Jacobs v. Humphrey*, 2 C. & M. 413.

(t) 1. 35 & 36 Vict. c. 58, s. 54. *Re Crook*, 71 L. T. 236; *Todd v. Pratt*, 1 R. 11 C. L. 473.

(u) *Re Ford*, 1900, 1 Q. B. 264. The section is not applicable to the case of a company winding-up: *Re Withernsea Brick Works Co.*, 16 Ch. D. 337.

(x) That on the bailiff is not sufficient: *Ex parte Warren*, 15 Q. B. D. 48.

(y) See *Woolford's Trustee v. Levy*, 66 L. T. 812. As to an existing claim on behalf of the landlord for rent, see *Re Driver*, 80 L. T. 840; *Re McCarthy*, 7 L.

R. Ir. 473. *Re Mills*, 1909, 2 I. R. 114.

(z) See the cases, *post*, p. 663.

(a) Only the judgment debt and the poundage are included: *Willey v. Hucks* (1909), 1 K. B. 760.

(b) See the cases, *post*, p. 663.

(c) These run from the time of sale, and not from that of receipt of proceeds by sheriff: *Ex parte Ross*, 21 Q. B. D. 472. See *Lole v. Betteridge*, 1898, 1 Q. B. 256.

(d) That on the bailiff is not sufficient: *Bellise v. McGinn* [1891], 2 Q. B. 227.

(e) *Bower v. Hett*, 1895, 2 Q. B. 337.

(f) *Re Neil Mackenzie*, 81 L. T. 214.

not bankruptcy supervened. (*g*) And where he has several writs it is immaterial under which he sells. (*h*)

Sale when. The goods must be sold within a reasonable time after seizure (*i*) and before the return of the *vend. exp.* (*j*) He is responsible for their safe custody until sale. (*k*) The sale must be for not much below the real value, (*l*) and is for ready money and immediate delivery. He is not therefore justified in selling more than necessary to satisfy the writ on the supposition that the actual delivery may be prevented by loss or accident. (*m*) If an adequate price be obtained they must be sold, and the plaintiff may be the purchaser. (*n*) If not sold he must return that they remain in his hands for want of buyers. (*o*)

Return. Where a tenant entered under an agreement for a lease and paid the stipulated rent, it was held that a tenancy from year to year was created, which the sheriff might sell under this writ. (*p*)

Annual tenancy. Where a lease and fixtures are taken they may be sold separately if there is difficulty in finding a purchaser for the whole; (*q*) and where an outgoing tenant has agreed to assign the remainder of his term, it may be sold before an actual assignment, and have set on it the value agreed to be given. (*r*)

Lease and fixtures.

Assignment.

Payment. If payment is made to the sheriff before sale, that is a bar to further execution. (*s*)

An officer who receives notice of an injunction restraining the sale should at once verify the information. (*t*)

Farm stuff. By 56 Geo. III. c. 50, s. 3, the sheriff may sell the crops or produce mentioned in sec. 1 (*u*) subject to an agreement to expend it on the land.

Auction. By 46 & 47 Vict. c. 52, s. 145, where the sheriff sells goods of a debtor under an execution for a sum exceeding £20 (including legal incidental expenses) the sale shall, unless the Court from which the process issued otherwise orders, be made by public auction and not by bill of sale or private contract, and shall be publicly advertised on and during three days next preceding the day of sale. This section does not seem to apply where the goods are sold to levy a sum not exceeding £20,

(*g*) *In re Pearce*, 14 Q. B. D. 966.
 (*h*) *Jones v. Atherton*, 7 Taunt. 56;
Drewe v. Lainson, 11 Ad. & E. 529.
 (*i*) *Bales v. Wingfield*, 2 N. & M. 831.
 (*j*) *Jacobs v. Humphrey*, 2 C. & M. 413.
 (*k*) *Sly v. Finch*, Cro. Jac. 514.
 (*l*) *Keightley v. Birch*, *ubi supra*; and
 see *Edge v. Kavanagh*, 24 L. R. Ir. 1.
 (*m*) *Aldred v. Constable*, 6 Q. R. 370.
 See *Cook v. Palmer*, 6 B. & C. 739.
 (*n*) *Leader v. Danvers*, 1 B. & P. 360.

(*o*) *Keightley v. Birch*, *ubi supra*.
 (*p*) *Westmoreland v. Smith*, 1 M. & R. 137.
 (*q*) *Barnard v. Leigh*, 1 Stark. 43.
 (*r*) *Sparrow v. Earl of Bristol*, 1 Marsh. 10.
 (*s*) *Woods v. Finnis*, 7 Ex. 370; *Gregory v. Stoman*, 1 E. & B. 368.
 (*t*) *Ex p. Langley*, 13 Ch. D. 110.
 (*u*) See *ante*, p. 230. Not applicable to I.

including legal incidental expenses, although judgment has been entered for a greater sum, (x) but it could probably not be evaded by selling portions at different times of less than £20 if the total to be levied exceeded that amount. (y) If a sale contrary to this section take place, it is until set aside by the Court valid as against a subsequent execution-creditor. (z)

For the fees, see *post*. (a) The poundage is £5 per cent. on the first £100 and 2½ per cent. after.

Distringas.—This writ, which issues against a sheriff who has gone out of office and returns that he has seized the goods, but that they remain in his hands for want of buyers, is also in aid of that of *fi. fa*. *Distringas*.

The duty of the sheriff is to distrain the land and chattels of the late sheriff in order to compel sale of the goods still remaining in his hands. (b)

Ne Exeat Regno.—This writ is now apparently confined to cases arising under the Debtors Act. (c) The sheriff's duty is to take the defendant and keep him in custody until he give the required security. But on final judgment he must be discharged. (d) *Ne Exeat*.

Nocumento amovendo.—This writ issues to remove a wall or other obstruction which has been adjudged a nuisance. *Nocumento amovendo*.

Possession.—This writ is employed in actions for the recovery of land to put a successful plaintiff into possession of the premises. (e) *Possession*.

The rule as to breaking doors under this writ is contained in *Semayne's Case*, (f) the second resolution in which is that where any house is recovered by any real action or ejectment the sheriff may break the house and deliver the seisin or possession to the plaintiff. Breaking doors.

The sheriff's duty is to deliver the property to the plaintiff,

(x) *Ex parte Berthier*, 7 Ch. D. 892; *Turner v. Bridgett*, 8 Q. B. D. 392; *Mostyn v. Stock*, 9 ib. 432.

(y) *Ex parte Villars*, 9 Ch. 432; *Jones v. Parcell*, 11 Q. B. D. 430; County Court rules, 1903, Ord. 25, r. 22, 23. The section does not apply to I.

(z) *Crawshaw v. Harrison*, 1894, 1 Q. B. 79.

(a) Page 654.

(b) 1 Chit. Arch. 575; *Clerk v. Withers*, 6 Mod. 300.

(c) 32 & 33 Vict. c. 62, s. 6. *Hinds v. Hinds*, 43 L. T. 750; 1. 35 & 36 Vict. c. 57, s. 7.

(d) *Hume v. Druryff*, L. R. 8 Ex. 214. See Order lix.

(e) See Order xlvii. As to possession under the Lands Clauses Act, see 8 & 9 Vict. c. 18, s. 91. As to the process under the Land Law (Ireland) Acts, see *Craig v. McCullagh*, 1900, 2 I. R. 136.

(f) 5 Rep. 91

Persons to be removed if no attornment.

Indemnity delivery of part.

and for this purpose he must remove all persons off the premises unless the plaintiff recovers only an undivided portion, in which case he cannot turn persons out of possession, but can only put the plaintiff in possession of the portion to which he is entitled. (g) If persons be left on the premises it is not a complete execution, unless they attorn to the plaintiff. (h) No notice is necessary to the persons actually in possession. (i) It is necessary that the plaintiff point out to the sheriff the precise lands to which he is entitled; (k) if more be taken the Court will order restitution, (l) and if no person attend the sheriff on behalf of the plaintiff to be put in possession, this is a good return. (m) It is usual for the lessor of the plaintiff to give the sheriff an indemnity for executing the writ. (n) The delivery of part is sufficient, (o) unless it be in the possession of several persons, or an undivided share. (p)

For the fees, see *post*. (q) The poundage is 1s. in the pound on the yearly value of the lands up to £100, and 6d. in the pound for every pound above that sum. (r)

Supersedeas.

Supersedeas.—This is a general writ, varying in form with the previous writ issued, and requires the sheriff to supersede the execution under such previous writ.

TIPSTAFF

Tipstaff.

Orders of committal issued by way of process and not by way of punishment fall into this class. (s)

GAOLERS

Gaoler.

Prisoners committed under such orders or under attachment in similar circumstances are first-class misdemeanants. (t)

(g) Chit. Arch. 851.

(h) *Upton v. Wells*, 1 Leon. 145.

(i) *Minet v. Johnson*, 6 Ti. Rep. 417.

As to execution anew on unlawful re-entry and restitution, l., see 23 & 24 Vict. c. 154, ss. 70, 71, 96. And as to recovery of premises not exceeding £100 a year, see 50 & 51 Vict. c. 33, s. 7.

(k) *Davenport v. Rhodes*, 11 M. & W. 608; *Thynne v. Surl* [1891], 2 Ch. 79.

(l) *Cottingham v. King*, 1 Burr. 627.

(m) Wat. p. 322.

(n) Com. Dig. Ex. A. 3.

(o) *Cottingham v. King*, *ubi supra*; *Floyd v. Bethill*, 1 Rol. 420.

(p) *Saul v. Dawson*, 3 Wils. 49.

(q) Page 654.

(r) 50 & 51 Vict. c. 55, s. 39 (5). Not applicable to l.

(s) *Ante*, p. 14. In l. these orders are directed to the sheriff or to any peace officer or to such other person as the court or judge may order. Order xlv. r. 3.

(t) *Ibid.*

THE ADMIRALTY MARSHAL

The warrant of the Admiralty Division for the arrest of a ship, cargo or freight, is addressed to this officer, (u) and his substitutes, and commands them to detain the property mentioned therein in safe custody until the further order of the Court. (x)

When this officer sends by telegram to his substitute at an outport notice of the issue of the warrant, and the substitute communicates it to the master of the vessel, it is a contempt of Court to move the vessel from the place where she is lying. (y)

The jurisdiction extends to England and Wales and three miles from the coast. (z) Where the officer, on finding that the vessel had sailed, pursued her, and overtaking her within the jurisdiction, seized her, brought her back into port and dismantled her, the arrest was held illegal, (a) and so also was a subsequent detention effected by parties acting in concert with the original arresters, after she had been so brought back into port. (b)

Service of the warrant must be made, and this is done by affixing it to the mast or hull. (c) An arrest so effected extends not only to the vessel, (d) but to sails and rigging taken on shore for the purpose of safe custody, (e) and all other things of a like kind appurtenant to the ship, but in salvage cases the personal luggage of passengers is exempt, (f) and so are seamen's clothes. (g)

The cargo may be proceeded against in respect of liability attaching to it, or simply as security for freight which is due, (h) and part may be seized for that due on the whole. (i) If the cargo be on board and proceeded against specifically and named in the warrant, or if not so named, is proceeded against for freight, the arrest of the ship arrests the cargo. (k) But if landed and warehoused or transhipped it is otherwise, and here service must be effected by placing the warrant on the cargo, or if access to it be refused, by leaving a copy with the custodian thereof. (l)

(u) Or the officer of Customs. *The Alexander*, 1 Dods. 282; *The Dundee*, 1 Hagg. 124.

(x) Order v. r. 16 (38). As to rearrest when bail insufficient, see *The Freedom*, L. R. 3 Ad. & E. 495. I. G. Order 1867, r. 27. Where the damages exceed the amount of bail *fi. fa.* for the excess may issue: *The Gemmi*, 81 L. T. 379.

(y) *The Seraglio*, 10 P. D. 120.

(z) 41 & 42 Vict. c. 73.

(a) *Borjesson v. Carlberg*, 3 App. Cas. 1316.

(b) *Ibid.* 1322.

(c) Order ix. r. 12 (50). I. r. 27.

(d) Public ships are exempt. *The Comus*, 2 Dod. 464; *The Parlement Belge*, 4 P. D. 129; 5 *ib.* 197.

(e) *The Alexander*. *The Dundee*, *ubi supra*.

(f) *The Willem III*, L. R. 3 A. & E. 487.

(g) *The Vulture*, Prit. Ad. Dig. II. 3rd ed. 1850.

(h) *The Lady Durham*, 3 Hagg. 200; *The Victor*, Lush. 72.

(i) *The Roeliff*, L. R. 2 A. & E. 363.

(k) Where freight is not to be arrested a note is appended to the *præcipe*.

(l) Order x, r. 13 (60); ix. r. 14 (61).

Effect of arrest. The arrest binds the whole property, however great its value, and whether there be a possessory lien on it or not. (*m*) If the property be already in the hands of the sheriff the warrants take priority in order of time. (*n*)

Safe custody of property. The marshal is responsible for the safe custody of property while under arrest. (*o*) Where a *caveat* has been entered against the release of the property, he is bound to give notice to the party entering the same before he releases. (*p*) Otherwise he must, on receipt of a release, release the property, and this extends to all property mentioned therein, whether it be in the same or different places. (*q*) In a suit of restraint the required security must be first given. (*r*)

Delivery. In a suit of possession the marshal must deliver the ship to the plaintiff. (*s*)

Appraisement, etc. Commissions of appraisement, unlivery and removal are addressed to this officer and require him to appraise and certify the value or unload or remove the goods as the case may be.

Sale. Where there is an order for sale the marshal or his substitutes must sell and pay the proceeds into Court. (*t*) The sale in the absence of other order must be by public auction. If the property has been already appraised it cannot be sold for less than the appraisement. (*u*) The sale being effected the marshal must deliver the property to the purchaser, and if required execute a bill of sale to him. (*x*)

For the fees payable see *post*. (*y*)

2. OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW

THE TIPSTAFF

Tipstaff. The warrants of the Bankruptcy Court are addressed to this officer. (*z*) By the Bankruptcy Act, 1883, sects. 24 and 25, the judge of that Court has power to commit a debtor for offences against those sections. (*a*)

(*m*) *The Harmonic*, 1 W. Rob. 178; *The Nordstjernen*, Swa. 260.

(*n*) Order xlii. r. 29; *The Flora*, 1 Hagg. 298; *The Bloomer*, 11 L. T. 46.

(*o*) *The Hoop*, 4 Rob. 145; *The Rendsberg*, 6 ib. 157.

(*p*) Order xxix. r. 6 (327). See *The Scraglio*, *ubi sup.* I. r. 67.

(*q*) Order xxix. r. 4 (322). I. r. 63.

(*r*) *The Dickinson*, 10 P. D. 15.

(*s*) *Ibid.*

(*t*) Order li. r. 14 (693). I. r. 134.

(*u*) *Coote* 108.

(*x*) *Chastenauf v. Capeyron*, 7 A. C. 127.

(*y*) Page 657.

(*z*) See *ex p. Gutierrez*, 11 Ch. D. 298. In I. these warrants are issued under 20 & 21 Vict. c. 60, s. 72; and 35 & 36 Vict. c. 58, s. 69, and go to the sheriff. But those issued under 35 & 36 Vict. c. 58, s. 78, go to the messengers of the Court. Order xci. rr. 102, 104.

(*a*) See ss. 51 and 119, and 53 & 54 Vict. c. 71, s. 7. The liquidation of companies is assigned to the same Court,

And orders made under sect. 5 of the Debtors Act, 1869, for the committal of a defendant also fall within this class. (*b*) This order does not apply in case of non-payment by a married woman of a judgment-debt payable out of her separate estate under 45 & 46 Vict. c. 75, s. 1 (2). (*c*) There must be evidence of means to pay, but it is not necessary that those means should have been derived from the debtor's earnings or a fixed income, (*d*) and it is sufficient if there has been the means to pay any part of it. (*e*) It includes costs, (*f*) and may be exercised if payment is to be by instalments. (*g*) It need not be executed within a year, but remains in force as long as the judgment. (*h*)

Orders under
Debtors Act.

THE HIGH BAILIFF

The warrants and orders of the County Court in this category are the following:—

Orders of committal by way of process and not punishment, (*i*) whether the order be final or interlocutory. (*k*)

Under the Bankruptcy Act, 1883, s. 100, this Court has all the powers of the Bankruptcy Court, and its orders may be enforced in like manner. (*l*)

High bailiff.

Committal.

Bankruptcy.

8 Ed. VII. c. 69, s. 131. For fees see *post*. The operative words in these warrants are:—Arrest, "to take the said X. and deliver him to the governor or keeper of the prison," or "bring him before the Court," as the case may be. Search, "To enter in the day-time into the house (or other place) of the said X. situate at aforesaid and there diligently to search for the said property, and if any property of the debtor shall be there found by you on such search that you seize the same to be disposed of and dealt with according to the provisions of the Bankruptcy Act 1883." Seizure, "Forthwith to enter into and upon the house and houses or other the premises of the said debtor and also in all other place and places belonging to the said debtor where any of his goods are or are reputed to be; and there seize all the ready money jewels plate household stuff goods merchandize books of accounts and all other things whatsoever belonging to the said debtor except his necessary wearing apparel bedding and tools as excepted by the Bankruptcy Act 1883. And that which you shall so seize you shall safely detain and keep in your possession until you shall receive other orders in writing for the disposal thereof . . . and in case of resistance or of not having the key or keys of any door

or lock of any premises belonging to the said debtor where any of his goods are or are suspected to be you shall break open or cause the same to be broken open for the better execution of this warrant."

(*b*) *Mitchell v. Simpson*, 23 Q. B. D. 373; 25 *ib.* 183.

(*c*) *Scott v. Morley*, 20 *ib.* 120; and see *Re Walter*, 55 J. P. 276; *Pelton v. Harrison*, 1891, 2 Q. B. 422; *Re Turnbull*, 81 L. T. 439.

(*d*) *In re Park*, 14 Q. B. D. 597.

(*e*) *Ex parte Fryer*, 17 *ib.* 718.

(*f*) *Hewitson v. Sherwin*, L. R. 10 Eq. 53.

(*g*) *Evans v. Wills*, 1 C. P. D. 229; *Stonor v. Fowle*, 13 App. Cas. 20. In I. these orders are made under s. 5 of 35 & 36 Vict. c. 57, and go to the sheriff. The payment of costs may be made a condition of discharge but not the payment of the sheriff's fees for executing the order: *McTaggart v. Howard*, 1903, 2 I. R. 557.

(*h*) *Hermitage v. Kilpin*, L. R. 9 Ex. 205. The period of imprisonment must *semble* be stated: *Re Byrne*, 6 L. R. I. 455.

(*i*) Jud. Act, 1873, s. 89; Order xlii. r. 5. *Ex parte Martin*, 4 Q. B. D. 212.

(*k*) *Richards v. Cullerne*, 7 *ib.* 623; and see *R. v. Surrey County Court*, 13 *ib.* 963.

(*l*) See *supra*.

Debtors Act

Orders of committal made under sect. 5 of the Debtors Act, 1869. These must be exercised only by a judge or his deputy, and by an order made in open Court showing on its face the ground on which it is issued. (m) The order need not be then and there drawn up. (n)

Admiralty.

Admiralty.—The warrant in Admiralty matters is to arrest and detain a ship or cargo pending the further order of the Court.

Service of the warrant is to be effected in the same manner as that in the High Court, (o) and the warrant may be executed on Sunday, Good Friday, or Christmas-day. (p) Service by a clerk in the high bailiff's office is irregular. (q) The property must be released on receipt of an order to that effect; (r) but in a salvage action the property must be first appraised unless the plaintiff otherwise consents. (s)

Delivery.

Delivery.—This warrant issues for the delivery of specific property, and if the property cannot be found the lands and chattels of the defendant may be distrained. (t)

Execution on goods.

Execution on Goods.—This warrant authorizes the officer to levy or cause to be levied by distress and sale of the goods and chattels of the defendant, the sum recovered by the judgment and the costs of the execution. (u) Under it, the officer may seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding (x) of such person or his family, or the tools and implements of his trade (y) to the value of £5), and any money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money. (z) Such securities are to be held by the high bailiff as security for the amount directed to be levied. (a) The execution is to be superseded on payment of the debt and costs. (b)

(m) See *Kenyon v. Eastwood*, 4 Ti. Rep. 451.

(n) *Harris v. Slater*, 21 Q. B. D. 359.

(o) County Court Rules, 1903, Order xxxix. rr. 14, 15.

(p) *Ibid.* r. 13.

(q) *The Palomares*, 10 P. D. 36.

(r) County Court Rules, Order xxxix. r. 22.

(s) *Ibid.* r. 23. As to the receiver selling under an order, see 57 & 58 Vict. c. 60, ss. 522, 525, 533.

(t) Order xxv. r. 69; *Winfield v. Boothroyd*, 54 L. T. 574.

(u) 51 & 52 Vict. c. 43, s. 146. As to the duties of the officer of the Court in distraint for the recovery of tithe rent charge leviable on lands occupied by an owner, see 54 Vict. c. 8, s. 2.

(x) *I.e.* The sleeping accommodation: *Davis v. Harris*, 1900, 1 Q. B. 729.

(y) If there is only one article which is above the value that will not exclude the operation of the exemption: *Lavell v. Richings*, 1906, 1 Q. B. 480. An article which the defendant is selling on commission is not excepted. *Addison v. Shepherd*, 1908, 2 K. B. 118. The protection is limited to £5 in all. *Boyd v. Bilham*, 1909, 1 K. B. 14.

(z) S. 147. As to friendly societies, see *ante*, p. 232.

(a) S. 148.

(b) S. 155. As to the time from which a warrant sent to a foreign Court binds the property see *Birstall Co. v. Daniels*, 1908, 2 K. B. 254.

A claimant of goods taken in execution must deposit their values or pay the costs of keeping possession in order to prevent their being sold. (c) Claimant to goods.

If within five clear days from the taking in execution or before removal, the landlord claim in writing for rent in arrear, the bailiff shall in addition distrain for the rent so claimed and the costs thereof, and shall not within five days sell unless the goods be perishable or on request in writing of the defendant. On sale, he shall pay first the costs, then the landlord four weeks where weekly rental, two terms where less than a year, or one year in any other case, and then the amount for which the warrant issued. (d) Landlord.

The section does not authorize the distraint and sale of goods of a stranger, (e) where the bailiff is wrongfully in possession, but where he is rightfully in possession it is otherwise. (f)

The bailiffs may act as brokers and take the poundage allowed by the Act. (g) Brokers.

As above stated the sale is not to take place until the end of five days, and in the meantime the goods are to be deposited by the bailiff in some fit place, or remain in the custody of a fit person approved by the high bailiff. The sale must be made by one of the brokers or appraisers appointed under the Act. (h) In the case of a ship, an inventory and valuation must be first made and on completion of the purchase the high bailiff must if required execute a bill of sale to the purchaser at his expense. (i) In execution of a judgment *in rem* the sale may be free from incumbrance. (k) Sale.

Where execution issues from the High Court and County Court the writs take priority in order of time. (l)

Where bankruptcy supervenes, the execution is superseded in the same manner as in the High Court. (m) Bankruptcy.

For the fees and poundage payable to this officer, see *post*. (n)

Possession.—This warrant is employed in actions for the

(c) S. 156; *Goodlock v. Cousins*, 76 L. T. 313; *Miller v. Solomon*, 1906, 2 K. B. 91.

(d) S. 160.

(e) *Beard v. Knight*, 27 L. J. Q. B. 359; and see *Wilcoxon v. Searby*, 29 L. J. Ex. 154.

(f) *Hughes v. Smallwood*, 25 Q. B. D. 306.

(g) S. 159.

(h) S. 154. As to sales by bailiffs of inferior courts which are to be after three

days unless perishable goods on request of owner, see 7 & 8 Vict. c. 19, s. 6.

(i) Order xxxix. r. 68. As to company matters, see *In re Bassett's Co.*, 1894, 2 Q. B. 96.

(k) *The Ruby*, 1898, P. 52.

(l) 51 & 52 Vict. c. 43, s. 152; and see also 56 & 57 Vict. c. 71, s. 26, and *Murgatroyd v. Wright*, 1907, 2 K. B. 333.

(m) See *ante*, p. 235.

(n) Page 665.

recovery of land. It authorizes the high bailiff to give possession, and for this purpose he may enter on the premises with such assistants as he shall deem necessary between 9 a.m. and 4 p.m. (o) The warrant is to bear date next after the day named by the judge for delivery of possession and is to continue in force for three months. (p)

For the fees, etc., see *post.* (q)

Replevin.

Replevin.—The warrant to replevy is still employed in this Court. Under it the high bailiff is authorized to deliver the goods and chattels of the defendant to the plaintiff. (r)

Whatever may be distrained may be replevied (s) and this includes animals *feræ naturæ* or young born since the distress (t) or growing crops taken under 11 Geo. II. c. 19, s. 8. It does not extend to money (u) or deeds (x) or things annexed to the freehold. (y)

CONSTABLES

Constables.

Warrants, etc., in non-indictable offences.

The warrants and orders of justices in non-indictable offences are of this class. (z) The officer must be in possession of the warrant at the time of execution. (a) A warrant forthwith to arrest and take before a magistrate does not mean to take forthwith before a magistrate. (b) In the case of sureties to keep the peace if the warrant require the party to come before some justice and on refusal for the officer to convey him to gaol he may on refusal so convey him without further warrant. Where the warrant is thus general the officer has the election to bring him before what justice he pleases and to carry him to gaol for refusal to find sureties before such justice. But if the warrant direct the party to be brought before the justice who made it, the officer ought not to carry him before another. (c)

Civil commitments.

Commitments for non-payment of rates are not in the nature of civil process (d) but a conviction for not delivering up books to a town council (e) or not paying a cab fare (f) or money

- (o) S. 142.
- (p) S. 143.
- (q) Page 665.
- (r) S. 134.
- (s) *Att.-Gen v. Brown*, 1 Sw. 296.
- (t) *Davis v. Powell*, Will. 46.
- (u) *Gilbert on Rep.* 156.
- (x) *Bac. Abr. Rep. F.*
- (y) *Niblett v. Smith*, 4 T. R. 504.
- (z) See *R. v. Paget*, 8 Q. B. D. 151; *R. v. Pratt*, L. R. 5 Q. B. 176. As to the

power of councils of conciliation see 59 & 60 Vict. c. 30.

- (a) *Galliard v. Laxton*, 2 B. & S. 363.
- (b) *O'Brien v. Bradner*, 49 J. P. 227.
- (c) 1 Hawk. c. 28, ss. 12, 13.
- (d) *Re Edgcombe*, 1902, 2 K. B. 403. As to a married woman see *Re Allen*, 1894, 2 Q. B. 924.
- (e) *Eggington*, 2 El. & Bl. 717.
- (f) *R. v. Kerswill*, 1895, 1 Q. B. 1; 43 W. R. 59.

under a maintenance order (*g*) is and so in all cases of civil debts. (*h*)

The powers under warrants of distress have been already mentioned. (*i*) Distress.

In recovery of tenements, within not less than twenty-one or more than thirty-one days of its date, they are to enter the premises (by force if needful) and give possession to the landlord or agent. Such entry is not to be made on Sunday, Good Friday and Christmas-day, nor except between 9 a.m. and 4 p.m. (*k*) Recovery of tenements.

Search warrants under the Explosives, (*l*) Licensing, (*m*) and Vagrant Acts, (*n*) are of this class, and here power to enter is of the essence. Search.

As to explosives, any officer who has reasonable cause to suppose that any offence against the Explosives Act is being committed in respect of any carriage (not being on a railway) or any boat conveying, loading or unloading any explosive and that the case is one of emergency, may stop, enter, inspect and examine such carriage or boat and generally take such precautions as may be necessary to remove any danger as if the explosives were liable to forfeiture. And the officer is to be in the same position as if armed with a search warrant. (*o*)

Similar power is conferred on constables or any officer authorized by the local authority in the case of the hawking of petroleum. (*p*) Here the amount conveyed is not to exceed twenty gallons, to be in closed vessel, properly ventilated; lights not to be brought near; carriage not to permit of escape; all precautions to be taken to prevent accident; no other explosive to be in same carriage while being used. (*q*)

Under orders of the local authority or Local Government Board in case of alleged nuisance, the officer is clothed with the like powers as those of officers of the local authority. (*r*) Nuisance.

(*g*) *Re Gamble*, 1899, 1 Q. B. 305.

(*h*) 38 & 39 Vict. c. 90, s. 9; 42 & 43 Vict. c. 49, s. 6.

(*i*) *Ante*, p. 21.

(*k*) 1 & 2 Vict. c. 74, s. 1.

(*l*) 38 & 39 Vict. c. 17, s. 73.

(*m*) 37 & 38 Vict. c. 49, s. 17.

(*n*) 5 Geo. IV. c. 83, s. 13.

(*o*) 38 & 39 Vict. c. 17, s. 75. As to gunpowder in unlawful quantities on ships, etc., on the Thames, see 2 & 3 Vict. c. 47, s. 35. See 38 & 39 Vict. c. 17, s. 73 as to an order to enter premises, and s. 74 as to the destruction of the substance, a sample being first taken. See this Act, *post*, p. 378.

(*p*) 34 & 35 Vict. c. 105, s. 13; 44 & 45 Vict. c. 67, s. 4. Petroleum includes rock oil, rangoon or burmah oil, oil made from petroleum coal, schist, shale peat or other bituminous substance and any products of petroleum or any of the above-mentioned oils—34 & 35 Vict. c. 105, s. 3.

(*q*) S. 2.

(*r*) 38 & 39 Vict. c. 55, ss. 105, 106; 54 & 55 Vict. c. 76, s. 12. Orders to destroy dogs are made under 34 & 35 Vict. c. 56, s. 2. As to a warrant to apprehend scamen for certain offences see 57 & 58 Vict. c. 60, s. 380.

Old metals.

Orders to inspectors and sergeants of police to visit the places of business of registered dealers in old metals. (s)

Lunatics.

Orders as to the apprehension or detention of an alleged lunatic. (t) They may by order of a justice convey a lunatic to an institution for lunatics (u) which may be suspended, provision being made for temporary detention. (x) They may by warrant of a justice, duly backed arrest a lunatic escaped from Scotland or Ireland, (y) and under that of the Secretary of State remove a lunatic to a vessel to be conveyed to his own country. (z) They may also by order in writing of the master of an institution retake an escaped lunatic. (a)

Industrial schools.

And children ordered to an industrial school may be taken to a place of detention. (b)

The following are verbal orders :—

Disturbance in court.

In the case of persons disturbing a petty sessional court the justices have power at common law to order their removal. (c) A like power is conferred on revising barristers when sitting, (d) and it is presumed that registrars have the same power. (e)

A coroner may order the forcible exclusion of a party from the Court, (f) and so may a justice on a preliminary inquiry, even though he be the attorney of the party accused; (g) but if the inquiry be final and of a judicial nature all persons have a right to be present. (h)

Witnesses.

As to witnesses it seems that they may be requested to leave the Court during the hearing; but that if they do not choose to obey, their evidence cannot be rejected on that account. (i)

Breach of peace.

Out of sessions justices may verbally commit offenders in cases of breach or apprehended breach of the peace. (k)

(s) 24 & 25 Vict. c. 110, s. 7. The order runs: "to visit at any time the several places of business and inspect the goods and chattels of all dealers in old metals who are for the time being subject to the regulations of the said act and who carry on business as such dealers within your district."

(t) 53 & 54 Vict. c. 5, ss. 13, 15, 21; and see 54 & 55 Vict. c. 65, ss. 2, 19.

(u) *Ibid.*, c. 5, s. 16.

(x) S. 19.

(y) Ss. 86, 89.

(z) S. 71.

(a) S. 85. As to inspection of institutions for idiots see 49 & 50 Vict. c. 25, s. 12. As to removal to workhouse of released prisoners, 7 Ed. VII. c. 14, s. 1.

(b) 8 Ed. VII. c. 67, s. 63. As to order of removal of infant improperly kept see s. 5. As to pirated music see 2 Ed. VII

c. 15, s. 1: *Re Francis*, 88 L. T. 806.

(c) See *Ex parte Van Sandau*, 1 Phil. 445; Oke, 13th ed. 166.

(d) 28 & 29 Vict. c. 36, s. 16.

(e) There is no power to commit, 46 & 47 Vict. c. 52, s. 99. As to referees see Order xxxvi., r. 51.

(f) *Garnett v. Ferrand*, 6 B. & C. 611.

(g) 11 & 12 Vict. c. 42, s. 19. *Cox v. Coleridge*, 1 B. & C. 37. See *R. v. Griffiths*, 16 Cox C. C. 46.

(h) *Ibid.*, c. 43, s. 12. *Daubney v. Cooper*, 10 B. & C. 237, and see *Willis v. MacLachlan*, L. R. 1 Ex. D. 376.

(i) *Roberts v. Garratt*, 6 J. P. 154; *Ex parte Wright*, 39 *ib.* 85.

(k) *Still v. Walls*, 7 East, 533; *Brookshaw v. Hopkins*, Loft. 243. Cf. *Malony v. French*, L. R. 3 C. L. 391; *Forbes v. Lloyd*, 10 *ib.* 552.

A returning officer at an election may order a person who misconducts himself at a polling station to be removed by a constable; *(l)* or, if such person commit any offence there, to be arrested. *(m)*

Returning officer.

With regard to local authorities generally, there would appear to be no power at common law to sit with closed doors. *(n)* But this would apparently not apply to meetings of committees.

Local authorities.

As regards the Metropolis, the Commissioner may by order in writing authorize a superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for the purpose of cock-fighting, etc., and to take into custody all persons found therein without lawful excuse. *(o)* A similar power is conferred in the case of an unlicensed theatre at any time when the same shall be open for the reception of persons resorting thereto. *(p)*

Cockfighting, metropolis.

Unlicensed theatre.

WEIGHTS INSPECTORS

The warrant of a justice to inspect measures weights and scales is executed by these officers. *(q)* Acting thereunder he may seize and detain any weight, measure, scale, balance or steelyard which is liable to forfeiture, and may for the purpose of such inspection, enter any place, whether a building or in the open air, whether open or inclosed, where he has reasonable cause to believe that there is any weight, etc., which he is authorized by the Act to inspect. *(r)*

Weights inspectors.

Where there is no fraud there is no offence, *(s)* nor where the weights are against the seller himself. *(t)*

WATER BAILIFFS

The warrant of a justice to enter suspected places, either by day or night, and there seize all illegal engines, or any salmon

Water bailiffs.

(l) 35 & 36 Vict. c. 33, s. 9.

(m) 6 & 7 Vict. c. 18, s. 86; 45 & 46 Vict. c. 50, s. 86.

(n) *Purcell v. Sowler*, L. R. 2 C. P. D. 215. *Cf. Tenby v. Mason*, 1908, 1 Ch. 457; 8 Ed. VII. c. 43.

(o) 2 & 3 Vict. c. 47, s. 47. The same power is conferred on local authorities by 10 & 11 Vict. c. 89, s. 36.

(p) *Ibid.*, s. 46. See *Fredericks v. Howie*, 1 H. & C. 381.

(q) A general warrant is sufficient: *Hutchings v. Reeves*, 9 M. & W. 747.

(r) 41 & 42 Vict. c. 49, s. 48. There need be no weight there: *Kershaw v. Johnson*, 1 C. & K. 329, and see *Wray v. Reynolds*, 1 E. & E. 165; *List*, 2 Broun. 596.

(s) *Withall v. Francis*, 42 J. P. 612.

(t) *Brooke v. Shadgate*, L. R. 8 Q. B. 352. See *L. & N. W. Ry. v. Richards*, 2 B. & S. 326; *Gt. W. Ry. v. Bailie*, 34 L. J. M. C. 31; and *Curr v. Stringer*, L. R. 3 Q. B. 433. As to cran measures see 8 Ed. VII. c. 17, s. 3.

illegally taken, is addressed to these officers, and continues in force for one week. (*u*)

Justices may by order authorize these officers during twenty-four hours from the time of issue to enter and remain on land near a salmon river for the purpose of detecting offenders. (*x*)

Any inspector or any person or persons duly appointed in writing by a board of conservators may at all times enter upon any lands to inspect any weir dam fishing weir fishing mill dam fixed engine obstruction mill race or watercourse. (*y*)

GAOLERS

Gaolers.

The warrants of this class addressed to these officers are commitments in cases of mere misdemeanour or offence, no hard labour generally being imposed. (*z*)

Under a *ne exeat regno* the time is limited to six months, (*a*) under Debtors Act orders one year (*b*) and judgments six weeks (*c*) and for non-payment of rates three months. (*d*) As to sureties for the peace see *ante*. (*e*) In civil matters the persons detained are in the class of debtors. The duty of the gaoler in such case is pointed out *infra*. (*f*)

OVERSEERS

Overseers.

Warrants of distress for poor-rates are executed by these officers. (*g*) Paid assistant overseers have the same powers as overseers; (*h*) but local collectors of rates have not. In this case the Summary Jurisdiction Act applies and the warrant must be executed by a constable. (*i*)

Levy for poor-rate.

The goods of any person assessed and refusing to pay the sum assessed for poor-rates may be levied not only in the place for which such assessment was made; but in any other place

(*u*) 24 & 25 Vict. c. 109, s. 34, and see *post*, p. 428. Extended to all freshwater fish by 41 & 42 Vict. c. 39, s. 9.

(*x*) 28 & 29 Vict. c. 121, s. 31. This warrant and order may be addressed to conservators, and these may issue a like order which continues in force for two months, 36 & 37 Vict. c. 71, s. 37—extended to any freshwater fish, and to waters frequented by freshwater fish, by 43 Vict. c. 11, s. 3. As to fish passes see 36 & 37 Vict. c. 71, s. 46.

(*y*) 36 & 37 Vict. c. 71, s. 56.

(*z*) See *R. v. Hamilton*, 1901, 1 Q. B. 740.

(*a*) 32 & 33 Vict. c. 62, s. 6.

(*b*) S. 4.

(*c*) S. 5. Cf. S. 43 & 44 Vict. c. 34,

s. 4. 1. 35 & 36 Vict. c. 57, s. 8.

(*d*) 12 & 13 Vict. c. 14, s. 2.

(*e*) Page 36.

(*f*) Page 424.

(*g*) *R. v. Price*, 5 Q. B. D. 300. As to county rates, see 15 & 16 Vict. c. 81, s. 27, and as to borough, see 45 & 46 Vict. c. 50, s. 148. As to London see 62 & 63 Vict. c. 14, s. 11. As to highways and county bridges 55 Geo. III. c. 143, s. 1; 5 & 6 Will. IV. c. 50, s. 34; 51 & 52 Vict. c. 41, s. 11; 56 & 57 Vict. c. 73, s. 29; *Freeman v. Read*, 32 L. J. M. C. 226; *R. v. Oxford JJ.*, 18 ib. 222.

(*h*) 59 Geo. III. c. 12, s. 7; 7 & 8 Vict. c. 101, s. 61.

(*i*) 38 & 39 Vict. c. 55, s. 256; 3 & 4 Will. IV. c. 90.

within the same county or precinct, and if sufficient distress cannot be found within the said county or precinct on oath made before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county or precinct by virtue of such warrant and certificate. (*k*) The distress must be followed by sale of such goods to the amount required, the overplus, if any, to be returned to the owner. (*l*)

There must be a demand before levy, (*m*) and that of the exact Demand. sum demanded, (*n*) but it need not be personal. (*o*) There can, however, apparently be no levy upon the representative of a person who dies before it is paid. (*p*) Money may be distrained as well as goods. (*q*) And beasts of the plough. (*r*) The distress may be made by deputy. (*s*)

The cost of the levy and of the broker or other officer for his Costs. attendance may also be levied. (*t*) On payment or tender of the amount and expenses the officer shall cease to execute the warrant. (*u*)

On appeal from any poor-rate which is either amended or Appeal. quashed, the sum assessed may, notwithstanding, be levied and applied in satisfaction of the next effective rate. (*x*) Notice of appeal does not prevent distress; but no greater sum shall be proceeded for than that assessed in the last effective rate. (*y*) But if a party be assessed for premises which he occupies and for other distinct premises which he does not occupy, and his goods are distrained for the several rates jointly, he is not confined to the remedy by appeal but may bring an action. (*z*) Succeeding overseers may levy to reimburse former overseers or for arrearages. (*a*)

As to the effect of a bill of sale, see *ante*. (*b*)

Bill of sale.

Where bankruptcy supervenes or a company is being wound Bankruptcy. up there is no power to distrain; but the claim must be proved as a debt which is entitled to preferential payment. (*c*)

(*k*) 17 Geo. II. c. 38, s. 7; 54 Geo. III. c. 170, s. 12.

(*l*) 43 Eliz. c. 2, s. 3.

(*m*) *East India Company v. Skinner*, 1 Bott. P. L. 249.

(*n*) *Hurrell v. Wink*, 8 Taunt. 369. See *Morton v. Brammer*, 29 L. J. M. C. 218.

(*o*) *R. v. J.J. Gloucester*, 24 J. P. 39; *Yewdall v. Craven*, 29 *ib.* 197; 11 L. T. 368.

(*p*) *Stevens v. Evans*, 2 Burr. 1152.

(*q*) *E. Ind. Co. v. Skinner*, *ubi sup.*

(*r*) *Hutchins v. Chambers*, 1 Burr. 579.

(*s*) *Walsh v. Southwell*, 20 L. J. M. C. 165.

(*t*) 39 & 40 Vict. c. 61, s. 31.

(*u*) 11 & 12 Vict. c. 43, s. 28, and as to exemption of wearing apparel, etc., see 42 & 43 Vict. c. 49, s. 43, *ante*, p. 22.

(*x*) 41 Geo. III. c. 23, s. 1.

(*y*) S. 2.

(*z*) *Bristol Poor Governors v. Wait*, 1 A. & E. 264.

(*a*) *East Dean v. Everett*, 3 E. & E. 574.

(*b*) Page 230.

(*c*) 51 & 52 Vict. c. 62.

- Company.** Distress levied against the estate or effects of a company in liquidation is void. (*d*) But where they had levied an injunction was refused unless the liquidator paid the amount due. (*e*)
- Goods covered by debentures and in possession of a receiver appointed by the trustee of the covering deed are not distrainable, either for poor or district rates assessed against the company. (*f*) Otherwise where the possession is that of a receiver appointed in an action. (*g*)
- Charges.** By 57 Geo. III. c. 93, s. 1, distresses for rates under £20 are not to be charged for otherwise than as in the schedule thereto. (*h*)
- Paupers.** Orders for the removal of paupers are addressed to these officers or the guardians. (*i*) Such orders must contain description of the pauper, (*k*) and actual chargeability; (*l*) but not the grounds on which the justices arrive at their conclusion. (*m*)
- Lunatics.** Justices may by order require a lunatic to be apprehended (*n*) or released. (*o*) The guardians have a like power. (*p*)

EXPLOSIVES INSPECTORS

Explosives inspectors.

Entry on wharves, etc.

Any of the following officers—namely, any Government inspector under the Explosives Act, any chief officer of police, and any superior officer appointed for the purposes of this Act . . . may for the purpose of ascertaining whether the provisions of this Act with respect to the conveyance, loading, unloading and importation of an explosive are complied with, (*q*) enter, inspect and examine at any time, and as well on Sundays as on other days, the wharf, carriage, ship or boat of any carrier or other person who conveys goods for hire, or of the occupier of any factory magazine on shore, or of the importer of any explosive on or in which wharf, carriage, ship or boat he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance, but so as not to unnecessarily obstruct the work or business of any such carrier, person, occupier or importer.

(*d*) *Ante*, p. 233.
 (*e*) *Re Dry Docks Co.*, 39 Ch. D. 306.
 (*f*) *Richards v. Kidderminster*, 1896, 2 Ch. 212.
 (*g*) *Re Marriage & Co.*, 1896, 2 Ch. 663.
 (*h*) *Post*, p. 672.
 (*i*) 35 Geo. III. c. 101; *R. v. St. Ollave's*, 3 Salk. 256.
 (*k*) *Johnson*, 2 *ib.* 485.
 (*l*) *R. v. Netherton*, Burr. 139.

(*m*) *R. v. Honiton*, *ib.* 680. See *Brighton v. Strand* [1891], 2 Q. B. 156.
 (*n*) 53 & 54 Vict. c. 5, ss. 13, 15, 21, 24; and see 54 & 55 Vict. c. 65, s. 25.
 (*o*) 53 & 54 Vict. c. 5, s. 68.
 (*p*) S. 81. Guardians can sit with closed doors. *Purcell v. Souler*, L. R. 2 C. P. D. 219. As to the powers of asylum visitors, see 53 & 54 Vict. c. 5, ss. 63–67, 79.
 (*q*) See *post*, p. 378.

Any such officer if he find any offence being committed under this Act in any such wharf, carriage, ship or boat, or on any public wharf may seize and detain or remove the said carriage, ship, or boat, or the explosive, in such manner and with such precautions as appear to him to be necessary to remove any danger to the public, and may seize and detain the said explosive as if it were liable to forfeiture. Seizure and detention.

Any officer above-mentioned in this section, and any officer of police, or officer of the local authority who has reasonable cause to suppose that any offence against this Act is being committed in respect of any carriage (not being on a railway), or any boat conveying, loading, or unloading any explosives, and that the case is one of emergency, and that the delay in obtaining a warrant will be likely to endanger life, may stop and enter, inspect and examine such carriage or boat, and by detention or removal thereof or otherwise take such precautions as may be reasonably necessary for removing such danger in like manner as if such explosive were liable to forfeiture.

Every officer shall for the purpose of this section have the same powers and be in the same position as if he were authorized by a search warrant granted under this Act. (r) Deemed in possession of warrant.

NUISANCE INSPECTOR

The justices may by order authorize these officers to remove infected persons (s) or bodies (t) from premises. Nuisance inspector.

LOCAL OFFICERS

Justices may by order addressed to these officers, where infectious disease attributable to milk exists, empower them to inspect dairies, *i.e.*, places from which milk is supplied or in which it is kept for sale. (u) Upon proper cause shown they may order the detention of a person in hospital, (x) and in this case hospital officers or inspectors of police are to do necessary acts for enforcing the execution thereof. Local officers.

(r) 38 & 39 Vict. c. 17, s. 75.

(s) *Ibid.*, c. 55, s. 124. *Warwick v. Graham*, 1899, 2 Q. B. 191. The order runs "to forthwith remove the said from the said house to the sanatorium of and belonging to the sanitary authority of the said city at wherein he is to be received and detained by the superintendent thereof."

(t) *Ibid.* s. 142. The order runs: "that the aforesaid dead body be forthwith removed to the public mortuary for the said parish and the same be buried within the period of twenty-four hours from the making of this order."

(u) 53 & 54 Vict. c. 34, s. 4.

(x) S. 12.

The like powers are conferred in the Metropolis, together with that of authorizing an officer to enter underground dwellings for inspection. (*y*)

School officers and officers of the local authority (*z*) may be authorized to enter premises where a child is suspected of being employed. (*a*)

3. ORDERS OF LOCAL AUTHORITIES

*Orders of
Local Authori-
ties.*

These orders (*b*) constitute the officer executing them the agent simply of the person or authority making them. In some cases this agency is express, in others it is to be implied from the circumstances, but the principle applicable to both is the same. (*c*)

Local Acts.

Local Acts confer upon local authorities, sometimes called commissioners, powers to do certain things, and officers are directed to be appointed in pursuance of the Acts for the purpose of carrying the provisions of the statutes into execution.

Such officers are, while acting within the scope of the powers delegated to them, the agents of the body entrusted with the execution of the Act. (*d*)

A power in such an Act to seize wares, merchandize, etc., placed on footways or carriageways, and not removed when required by the authority, may be exercised without any previous proceedings before justices. (*e*)

Bye-laws.

Bye-laws.—Under the denomination of bye-laws are to be included the regulations which are made for the management of the revenue, or of the Post Office, to regulate traffic in the Metropolis, and in towns, by the Secretary of State in regard to the management of gaols, and the execution of the Acts relating to burial grounds, of the Local Government Board for the administration of the poor law, public health, and locomotives on highways, and those of local authorities.

(*y*) 54 & 55 Vict. c. 76, ss. 67, 71, 97.

(*z*) 39 & 40 Vict. c. 79, s. 29.

(*a*) 3 Ed. VII., c. 45, s. 8. With regard to schools, home lessons form no part of the curriculum. If a child is detained for refusing to do them, that is an assault: *Hunter v. Johnson*, 13 Q. B. D. 225.

(*b*) Summonses issued by Courts or justices are not within the purview of the work. They are purely "administrative,"

as distinguished from "executive."

(*c*) As to officers casually employed, see *The Ratata*, 76 L. T. 224.

(*d*) See *post*, p. 628. As to the imposition of a penalty see *Triggs v. Lester*, 30 J. P. 228.

(*e*) *Brackley v. Battersea*, 23 Q. B. D. 486. See *Attorney-General v. Hooper*, 1893, 3 Ch. 483; and *Keep v. St. Mary*, 1894, 2 Q. B. 524.

The power to make such regulations is to be found in the statutes which confer the general powers on the different authorities, and if in making the bye-law, the power conferred, or the general law of the land is exceeded, it is void. (*f*)

A bye-law is a law made by some authority less than the sovereign or Parliament, in respect of a matter specially or impliedly referred to that authority, and not provided for by the general law of the land. (*g*)

The necessary ingredients of its validity are :—

1. Consistent with and not repugnant to the general law. Consistent
with law.
2. Certain, *i.e.*, not ambiguous, and affording complete direction to those who are to obey it, and have definite penalties for its breach, which must not be excessive. (*h*) Certain. There may be power to mitigate the penalty. (*i*)
3. General in its application, *i.e.*, obligatory on all persons General. equally.
4. Not *ultra vires*, *i.e.*, within the scope of the authority Not *ultra vires*. delegated in the particular case. (*k*)

The Secretary of State is liable in trespass if a person be removed from one part of a prison to another in which he is not legally confined, under a general order made by him for the classification of prisoners which he had no legal authority to make. (*l*) A bye-law respecting non-compliance with the requirements of a board is probably *ultra vires*. (*m*) And so also is one giving power to such board to pull down buildings erected contrary to the bye-laws. (*n*) And one made by a municipal corporation that parents should be liable to a penalty if they suffered a child to be selling articles in the street after a certain hour. (*o*) And one made by a local board that a person should not cause or suffer any fowl to enter and remain in pleasure grounds. (*p*) Where power was conferred on conservators to make bye-laws to regulate the use of nets, and a bye-law was made thereunder prohibiting during a certain season the use of any net except a trawl, it was held *ultra vires*. (*q*)

(*f*) As to time of coming into operation, see 52 & 53 Vict. c. 63, s. 36. Bye-laws must be construed strictly. See *Rolles v. Newell*, 25 Q. B. D. 335.

(*g*) See Lumley, *Bye-laws*, p. 2; *London Shipowners v. Docks*, 1892, 3 Ch. 242.

(*h*) *Clarke v. Tucker*, 2 Ventr. 183; *Nash v. Finlay*, 85 L. T. 682.

(*i*) *Piper v. Chappell*, 14 M. & W. 624.

(*k*) As to a rule made by a delegated authority of the local authority, see *Huth v. Clarke*, 25 Q. B. D. 391.

(*l*) *Cobbett v. Grey*, 4 Ex. 729.

(*m*) *Young v. Edwards*, 33 L. J. M. C. 227. But see *Hall v. Nixon*, L. R. 10 Q. B. 152.

(*n*) *Brown v. Holyhead*, 32 L. J. Ex. 25.

(*o*) *Macdonald v. Lochrane*, 51 J. P. 629.

(*p*) *Torquay v. Bridle*, 47 J. P. 183; and see *Everett v. Grapes*, 3 L. T. 669.

(*q*) *Pidler v. Berry*, 59 L. T. 230; and see *Wood v. Venton*, 54 J. P. 662.

Reasonable.

5. Reasonable. (r) In determining whether or no a bye-law is reasonable, it is material to consider the relation of its framers to the locality affected by it and the authority by which it is sanctioned. (s)

Where a council made a bye-law under the Municipal Corporations Act, 1882, s. 23, that no person not being a member of His Majesty's army or auxiliary forces, acting under the orders of his commanding officer, should sound or play upon any musical instrument in any of the streets of the borough on Sunday, it was held unreasonable. (t) And so also was one where a penalty was imposed on every person who in any street shall sound or play upon any musical or noisy instrument, or shall sing, recite or preach in any street without having previously obtained a licence in writing from the mayor. (u) And one preventing persons frequenting and using any street or public place for the purpose of selling or distributing any paper or written or printed matter devoted wholly or mainly to giving information as to the probable result of races, steeplechases or other competitions. (x) And so was one made under the Public Health Act, that no person shall commence the erection of a building in a new street unless and until the kerb of each footpath therein shall have been put on such a level as may be fixed and approved by the urban sanitary authority. (y) And one prohibiting the keeping of swine within fifty feet of a dwelling-house, (z) or requiring a new fee for the commencement of each new period of granting licences, (a) or notice as to the erection of temporary structures, (b) or not providing for notice to the person against whom proceedings are to be taken, (c) or prohibiting building on an open space in the rear of new buildings, (d) or providing that no person in any street or public place or on land adjacent thereto shall sing or recite any profane or obscene song or ballad or use any profane or obscene language, (e) or

(r) See *Marshall v. Smith*, L. R. 8 C. P. 416. *Reay v. Gateshead*, 55 L. T. 92, and *Strike v. Collins*, *ib.* 182.

(s) Per Lord Hobhouse, *Slattery v. Naylor*, 13 App. Cas. 452; and see *Kruse v. Johnson*, 1898, 2 Q. B. 91. *Dublin Corporation v. Irish Church Missions*, 1901, 2 L. R. 387.

(t) *Johnson v. Croydon*, 16 Q. B. D. 708.

(u) *Munro v. Watson*, 57 L. T. 366; *Parker v. Bournemouth*, 86 L. T. 449. See also *Emmisworthy v. Field*, 1904, 2 L. R. 518.

(x) *Scott v. Pilliner*, 1904, 2 K. B. 855.

(y) *Rudland v. Sunderland*, 33 W. R. 164. See *R. v. Newcastle-on-Tyne*, 60 L. T. 963; and *Burton v. Acton*, 51 J. P. 566.

(z) *Hear v. Burnley Union*, 12 Q. B. D. 617.

(a) *R. v. Commissioners of Sewers*, 22 L. T. 582.

(b) *Fielding v. Rhyl Commissioners*, L. R. 3 C. P. D. 272.

(c) *Nokes v. Islington*, 1904, 1 K. B. 610, 619. *Arlidge v. Islington*, 1909, 2 K. B. 127.

(d) *Quinby v. Liverpool*, 53 J. P. 213; *Calder Co. v. Pilling*, 14 M. & W. 76.

(e) *Strickland v. Hayes*, 74 L. T. 137.

that persons carrying coal for sale shall reweigh on request of a purchaser or any one on his behalf or an officer of the local authority. (*f*)

A bye-law may be good in part and bad in part, if the two parts be distinct. (*g*) There is no dispensing power in the makers thereof. (*h*) But, where an Act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner, and subject to like consent and conditions, if any, to rescind, revoke, amend or vary such rules, regulations and bye-laws. (*i*)

Confirmation by a superior authority does not render a bad bye-law valid. Where the Lord Chancellor was reported to have confirmed a bye-law it was said: "it is never the better for that, for that is done of course. If the orders be not good, let the parties look to that at their peril." (*k*)

Adulteration.—Any medical officer of health, inspector of nuisances or inspector of weights and measures, or any inspector of a market, or police constable . . . may procure any sample of food (*l*) or drugs. (*m*) They can only act within their district. (*n*)

The officer purchasing shall, after the purchase, forthwith (*o*) notify to the seller or his agent his intention to have the same analysed by the public analyst, (*p*) and shall divide the article into three parts (*q*) to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, deliver one of

(*f*) *Alty v. Farrell*, 1896, 1 Q. B. 636.

(*g*) *The Fishermen of Faversham*, 8 T. R. 352.

(*h*) *Wortley v. Notts*, 21 L. T. 582; *Yabbicom v. King*, 80 L. T. 159.

(*i*) 52 & 53 Vict. c. 63, s. 32.

(*k*) *Stationers' Co. v. Salisbury*, Comb. 222; *R. v. Wood*, 5 E. & B. 49.

(*l*) *James v. Jones*, 1894, 1 Q. B. 504; *McHugh v. McGrath*, 1894, 2 I. R. 78. As to inspection by officer of Local Government Board, see 62 & 63 Vict. c. 51, ss. 2, 3.

(*m*) 38 & 39 Vict. c. 63, s. 13. See *Hale v. Cole*, 55 J. P. 376. The purchase may take place in a shop or in streets, and public places of resort: 42 & 43 Vict. c. 30, s. 3. Food includes every article used for food or drink by man and every article with which it is compounded or prepared and flavouring matters and condiments:

62 & 63 Vict. c. 51, s. 26. Drug includes medicine for internal or external use: 38 & 39 Vict. c. 63, s. 2.

(*n*) *R. v. Smith*, 74 L. T. 348. See *McNair v. Cave*, 1903, 1 K. B. 24; *Connor v. Butler*, 1902, 2 I. R. 569. The prosecution must be instituted within twenty-eight days of the purchase: 62 & 63 Vict. c. 51, s. 19. See *Beardsley v. Giddings*, 1904, 1 K. B. 847. *Brooks v. Bagshaw*, 1904, 2 K. B. 798.

(*o*) Two minutes later is forthwith: *Somerset v. Miller*, 54 J. P. 614.

(*p*) See *Whecker v. Webb*, 51 J. P. 661; *Barnes v. Chipp*, 3 Ex. D. 176.

(*q*) The division must be actual: *Mason v. Cordary*, 1900, 2 Q. B. 419; *Smith v. Savage*, 1905, 2 K. B. 88. And each part must be sufficient to admit of a proper analysis: *Lowery v. Hullard*, 1906, 1 K. B. 398.

the parts to the seller or his agent. (r) The purchase may be by a servant. (s)

Margarine.

These officers may, without going through the form of purchase provided by the above-mentioned Act (38 & 39 Vict. c. 63), but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purpose of analysis samples of any butter or substances purporting to be butter which are exposed for sale, (t) and not marked "margarine." (u) In the case of importation or manufacture in the United Kingdom they may procure samples for analysis if they shall have reason to believe that the provisions of the Margarine Act, 1887, are infringed by its conveyance not consigned as margarine, and examine and take samples from any package. (x)

Milk.

They may also procure at the place of delivery any sample of any milk in the course of delivery (y) to the purchaser or consignee in pursuance of any contract. (z) Where there was an agreement to supply milk at H, H was held the place of delivery although the purchasers had paid the carriage from the place of supply. (a) The whole sample need not be submitted for analysis. (b)

No notification to the seller as above-mentioned is necessary in the case of milk samples. (c)

Diseases of
animals.

Diseases of Animals.—Inspectors employed by the local authority have the same powers as constables have under the Diseases of Animals Act, 1894. (d)

(r) 38 & 39 Vict. c. 63, s. 14; 62 & 63 Vict. c. 51, s. 27, and see s. 14, which provides for taking samples in course of delivery of all articles of food on the request or with the consent of the purchaser or consignee. See also *Buckler v. Wilson*, 1896, 1 Q. B. 63. As to articles used for fertilizing the soil or as food for cattle or poultry see 6 Ed. VII. c. 27, s. 3. And as to factories where butter margarine margarine-cheese or milk-blended butter are manufactured blended reworked or treated, 7 Ed. VII. c. 21, s. 2, which authorizes the officer on producing his authority if required to have the like powers as regards any premises registered with the authority as a butter factory. See this section, *post*, p. 426.

(s) *Garforth v. Esam*, 56 J. P. 521. *Macaulay v. McKirdy*, 20 R. 58.

(t) These words must be construed strictly: *Crane v. Lawrence*, 25 Q. B. D. 152; but the margarine need not be uncovered: *Wheat v. Brown*, 1892, 1 Q. B. 418.

(u) 50 & 51 Vict. c. 29, s. 10. Margarine = any article of food whether mixed with butter or not, which resembles butter and is not milk-blended butter: 7 Ed. VII. c. 21, s. 13.

(x) S. 8; 7 Ed. VII. c. 21, s. 12.

(y) Includes milk poured into the cans of a retailer and immediately sampled: *Semple*, 6 F. 65. See *Soutar*, 1907, S. C. 49.

(z) 42 & 43 Vict. c. 30, s. 3. See *Telford*, 1908, S. C. 83.

(a) *Filshie v. Evington*, 1892, 2 Q. B. 200.

(b) *Rolfe v. Thompson*, 1892, 2 Q. B. 196.

(c) *Rough v. Hall*, 6 Q. B. D. 17; *Ennis-killen v. Hilliard*, 14 L. R. Ir. 214. *Morton v. Fife*, 24 R. 10.

(d) 57 & 58 Vict. c. 57, ss. 43, 44; and see *post*, p. 375. The Act applies to cattle plague, pleuro-pneumonia or foot and mouth disease and swine fever.

They may at any time on giving reasons in writing, if required, enter any land or shed to which the Act applies, or ^{Entry.} other building or place where they have reasonable grounds to suppose: (a.) disease exists or has within fifty-six days existed; (b.) the carcase of a diseased or suspected animal is or has been kept, buried, destroyed or otherwise disposed of; or (c.) there is to be found any pen place vehicle or thing in respect whereof there has been a failure to comply with the provisions of the Act, an order, or a regulation of the local authority, (d.) this Act or such an order or regulation has not been or is not being complied with.

They may also enter at any time on the like condition any pen vehicle vessel or boat in which or in respect whereof there are reasonable grounds for supposing that the Act or such an order or regulation has not been or is not being complied with.

As to slaughter-houses, see 7 & 8 Vict. c. 87, s. 4, cited, *post.* (e)

Explosives.—Any officer authorized by the local authority *Explosives.* may, on producing, if demanded, either a copy of his authority . . . or some other sufficient evidence, require the occupier of any store (not subject to the inspector of mines), or any registered ^{Inspection.} premises, or any small firework factory, to shew him every or any place and all or any of the receptacles in which any explosive or ingredient of an explosive or regulated by the Explosives Act, (f) that is in his possession is kept, and to give him samples ^{Samples.} of such explosive ingredient or substance, or of any substance which the officer believes to be an explosive, or such ingredient or substance. (g)•

He may also purchase any petroleum from any dealer in it, *Petroleum.* and on producing a copy of his appointment, or other sufficient authority, require such dealer to shew him every or any place, and all or any of the vessels in which any petroleum in his possession is kept, and give him samples of such petroleum on payment of the value thereof. (h)

As to the power of officers of the local authority to arrest for offences, see *post.* (i)

Highways.—The surveyor is the local authority. (k)

Highways.

(e) Page 418.

(f) See *post.* p. 378.

(g) 38 & 39 Vict. c. 17, s. 69.

(h) 34 & 35 Vict. c. 105, s. 11; and see *Coleman v. Goldsmith*, 43 J. P. 718.

(i) Page 378.

(k) 38 & 39 Vict. c. 55, s. 144; and see as to district councils, 56 & 57 Vict. c. 73, ss. 21, 25, 26.

The principal Act dealing with Highways is 5 & 6 Will. IV. c. 50 (the Highways Act, 1835), the material sections of which are the following:—

Interpretation
clause.

5. In the construction of this Act the word "surveyors" shall be understood to mean surveyor of the highways, or way-warden; the word "parish" shall be construed to include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or any other place or district maintaining its own highways; . . . and the word "highways" shall be understood to mean all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements; and the word "justices" shall be understood to mean justices of the peace for the county, riding, division, shire, city, town, borough, liberty, or place in which the highway may be situate or in which the offence may be committed; and the word "church" shall be understood to include chapel; and the word "division" shall be understood to include limit; and the word "owner" shall be understood to include occupier; and "inhabitant" to include any person rated to the highway rate; and the words "petty session" or "petty sessions" to mean the petty session or petty sessions held for the division or place; . . . and all the powers hereby given to, and notices, matters, and things required for, and duties, liabilities, and forfeitures imposed on, surveyors, shall be applicable to all persons, bodies politic or corporate, liable to the repair of any highway. (I)

Penalty on
surveyor, etc.,
for neglect of
dnty.

20. If any surveyor or district surveyor or assistant surveyor shall neglect his duty in anything required of him by this Act, for which no particular penalty is imposed, he shall forfeit for every such offence any sum not exceeding five pounds.

As to repair
of highways
adjoining
bridges
hereafter to
be built.
Raised
causeways,
etc.

21. If any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law before the erection of the said bridge bound to repair the said highways: Provided nevertheless, that nothing herein contained shall extend or be construed to extend to exonerate or discharge any county or any part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof.

Powers for
getting
materials
and pre-
venting
nuisances
to extend

22. The several powers and authorities hereby vested in the surveyor of highways, as well for the getting of materials, as the preventing and removing of all nuisances and annoyances, shall be and the same are hereby vested in the surveyor of county bridges, and the roads at the ends thereof repairable therewith; and the several penalties, forfeitures, matters, and things in this Act contained relating to highways shall be and the same are hereby extended and

(I) Interpretation clauses are intended to define the meaning supposing there is nothing else in the Act which is opposed to the particular interpretation: Per Wood, V.C., *Midland Co. v. Ambergate Co.* 10 Ha. 369. They are for the purpose of interpreting words which are ambiguous or equivocal, and are not to disturb the meaning of such as are plain: Per Lush, J., *R. v. Pearce*, 5 Q. B. D. 389. They

ought to be strictly construed: Per Pollock, C.B., *Allsop v. Day*, 7 H. & N. 463. General words will not be so construed as to destroy special exemptions or privileges: Per Giffard, L.J. *Ex parte Morris*, L. R. 5 Ch. 174. If there are two inconsistent enactments it must be seen if one cannot be read as a qualification of the other: Per James, L.J., *Ellis v. Boulnois*, L. R. 10 Ch. 484.

applied, as far as the same are applicable, to such bridges, and the roads at the ends thereof as aforesaid, the said surveyor or surveyors of county bridges making satisfaction and compensation for all trespass and damage done in the execution of the powers of this Act, in such and the same manner as the surveyors of highways are required to make under the provisions of this Act. Sect. 22.

25. It shall be lawful for the surveyor to make a road through the grounds adjoining to any ruinous or narrow part of any highway (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house, or inclosed ground set apart for building ground, or as a nursery for trees), to be made use of as a public highway whilst the old road is repairing or widening, making such recompense to the proprietor and occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions for the highways assembled may think reasonable, such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act. to county bridges and roads at the ends thereof.
Power to use adjoining ground as a temporary road.

26. If any impediment or obstruction shall arise in any highways from accumulation of snow, or from the falling down of the banks on the side of such highways, or from any other cause, the surveyor is required from time to time, and within twenty-four hours after notice thereof from any justice of the peace of the county in which the parish may be situate, to cause the same to be removed. Surveyor to remove snow, etc.

34. For levying and recovering the rate (*m*) by this Act authorized to be made, the surveyor shall have the same powers, remedies, and privileges as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor. (*n*) Rates how to be recovered.

35. It shall be lawful for two rate-payers of any parish, within six days next after the annual appointment of the surveyor, by notice in writing, to require the said surveyor to call a meeting of the rate-payers of the said parish for the purpose hereinafter mentioned, and the said surveyor shall call such meeting within eight days after the receipt of such notice, and shall give six days' previous intimation of such meeting: and if at such meeting a majority of the rate-payers then and there assembled shall signify their consent thereto, it shall and may be lawful for the rate-payers keeping a team or teams of two or more horses or beasts of draught to divide among themselves, in proportion to the amount of rate to which they may respectively be assessed, the carrying of the material which may be required by the said surveyor for the repairs of the Ratepayers may divide among themselves the conveyance of stone, etc., for repair of highways, which shall be paid for by the surveyor.

(*m*) The surveyor could not maintain an action against the parties rated, for the sums assessed under 13 Geo. III. s. 34: *Underhill v. Ellicombe*, 11 C. & J. 450; see *Charinton v. Johnson*, 13 M. & W. 856. A plea stated that two justices made their warrant addressed to the surveyors of the highways of H., and to the constable of H., reciting that M., an occupier of lands in H., was duly rated to the repairs of the highways of the parish in a certain sum therein mentioned, which had been demanded and refused, and that he had been summoned and had not appeared, and therefore the warrant commanded them to levy the amount by distress and sale. That the defendant was constable of H.,

that certain persons mentioned in the warrant were surveyors of the highways, and that M. in the warrant named was the plaintiff, and so justified under the warrant as acting in aid and assistance of the surveyor. It was held, that the plea was not a plea under the statute; nor a good plea at common law: *Morrell v. Martin*, 3 M. & Gr. 581. Where a surveyor distrained on a person not liable he was held answerable: *Freeman v. Read*, 32 L. J. M. C. 226. But a rate not appealed from may be enforced: *R. v. Oxford JJ.*, 18 ib. 222.

(*n*) As to bridges see 22 Hen. VIII. c. 5, ss. 4, 9; 1 Anne st. 1, c. 18, s. 2; and 33 & 34 Vict. c. 73, s. 12.

Sect. 35.

highways within such parish, and they shall be paid by the said surveyor for such carrying or task-work, within one calendar month after having performed such service, after such rate per cubic yard or material per mile, and so on in proportion for any less distance than a mile, as shall be fixed by the justices at their first meeting in special sessions for the highways after the 25th day of March in every year, which rate the said justices are hereby required to fix at such special sessions: Provided always, that such carrying or task-work shall be performed at such times and places and in such manner as the said surveyor may direct (the periods of spring, seed-time, and harvest always excepted); and in case the said surveyor shall not approve of the manner in which such carrying or task-work shall be performed, it shall be lawful for such justices at a special sessions for the highways to hear the complaint of such surveyor in that respect, and to award such pecuniary redress or forfeiture against the party offending as to them shall appear reasonable. (o)

Penalty on taking away materials belonging to surveyor.

47. If any person shall, without the consent of the surveyor, take away materials which shall have been purchased, gotten, dug, or gathered for the repair or use of any highway, or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any highway, before the surveyor and his workmen shall have discontinued working therein for the space of six weeks (except the owner of any private grounds, and persons authorized by such owner to get materials in such quarry for his own private use, and not for sale), every person so offending shall for every such offence forfeit and pay, on conviction thereof, any sum not exceeding ten pounds.

Materials where and in what manner to be taken by surveyors.

51. It shall and may be lawful for every such surveyor, in any waste land or common ground, river or brook, within the parish for which he shall be surveyor, or within any other parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use in such other parish), to search for, dig, get, and carry away the same, (p) so that the said surveyor doth not thereby divert or interrupt the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of one hundred and fifty feet above or below any bridge, nor within the like distance of any dam or wear; and likewise to gather stones lying upon any lands or grounds within the parish where such highway shall be, for such service or purpose, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, without making any satisfaction for the said materials, but satisfaction shall be made for all damages done to the lands or grounds of any person or persons by carrying away the same, in the manner hereinafter directed for getting and carrying materials in inclosed lands or grounds; but no such stones shall be gathered without the consent of the owner of such lands or grounds, or a licence for that purpose from two justices at a special sessions for the highways, after having summoned such owner to come before them, and hear his reasons, if he shall appear and give any, for refusing his consent. (q)

Power to gather stones without making satisfaction, but satisfaction to be made for damages done by carrying them away.

Not to extend to

52. Provided always, That nothing in this Act contained relative to the

(o) This section does not apply to any parish within any highway district formed under 25 & 26 Vict. c. 61. See s. 42.

time: *Russell v. Midhurst Council*, 24 Tl. L. R. 368.

(q) *Alresford v. Scott*, 7 Q. B. D. 210.

(p) Includes stacking for a reasonable

gathering or getting of stones or other materials shall extend to any quantity of stones or other materials thrown up by the sea, commonly called beach, where the removal of the same would cause any damage or injury by inundation to the lands adjoining, or increased danger of encroachment by the sea. (r) Sect. 52.
sea beach,
etc.

53. [Notice to be given before materials are taken from private lands. If the occupier shows cause against the removal, two justices shall decide thereon.] (s)

54. [If sufficient materials cannot be found in waste lands, etc., surveyor may under licence (t) from justice take them from the several or inclosed lands or grounds, (u) making satisfaction to the owners.]

55. If any surveyor or person employed by him shall, by reason of the searching for, digging, or getting any materials for repairing any highways, make any pit or hole in lands, common grounds, rivers, or brooks as aforesaid wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open, and within three days after such pit or hole shall be opened or made where no materials shall be found, cause the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same, and where any such materials shall be found, within fourteen days after having dug up sufficient materials in such pit or hole, cause the same to be filled up or sloped down, and fenced off, if required by the owner of the land or ground, and so continued; and every surveyor shall within twenty-one days after he shall have been appointed to that office cause all the said pits and holes which shall then be open and not likely to be further useful to be filled up or sloped down in manner aforesaid, and if they are likely to be further useful he shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle: and in case such surveyor or person shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of ten shillings for every such default; and in case such surveyor or person shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before the justices at a special sessions for the highways, such surveyor, person or persons, shall forfeit and pay any sum not exceeding ten pounds for such neglect, to be determined and adjudged by such justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, and toward the repair of the roads in the parish where the offence shall be committed, in such manner as the said justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied. If surveyor shall make pits or holes in getting materials, he shall cause them to be filled up or sloped down, and fenced off; and in like manner all those already made.

Penalties on surveyor for neglect herein.

56. If any surveyor or district surveyor shall lay or cause to be laid any heap of stones or any other matter or thing whatsoever upon any highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the Penalty on surveyor allowing any heap of stones, etc., to remain on highway at night.

(r) See *Pitts v. Kingsbridge*, 25 L. T. 195; *Padwick v. Knight*, 7 Ex. 854; *Att.-Gen. v. Tomline*, 14 Ch. D. 58.

(s) See also 4 & 5 Vict. c. 51. As to bridges see 43 Geo. III. c. 59, s. 1; 55 Geo. III. c. 143, s. 1.

(t) A licence for 5 years without reference to the necessities existing at its date

is bad: *R. v. Bradford*, 1908, 1 K. B. 365.

(u) They may be carried away through the avenue to a house although they may not be searched for there. The other excepted places are garden, yard, lawn, park, paddock, inclosed plantation, or inclosed wood not exceeding 100 acres: *Ramsden v. Yeates*, 6 Q. B. D. 583.

Sect. 56.

Surveyor
damaging
mills, dams,
etc., by
digging
materials, to
forfeit not
exceeding £5.

What shall
be deemed
the centre
of the
highway.

Mode of
proceeding
if highway
is preju-
diced by
hedges, etc.

Time of
cutting
hedges and
trees.

said surveyor to guard against the same, he shall forfeit for every such offence any sum not exceeding five pounds. (x)

57. If any surveyor shall dig or cause to be dug materials for the highways, whereby any bridge, mill, building, dam, highway, occupation road, ford, mines, or tin works, or other work, may be damaged or endangered, he shall forfeit for every such offence, on conviction, any sum not exceeding five pounds, at the discretion of the justices before whom the complaint thereof shall be made, notwithstanding his liability to any civil action to which he may make himself liable by such act.

63. Where in this Act any matter or thing is directed or forbidden to be done within a certain distance of the centre of the highway, that portion of ground shall be deemed and taken to be the highway which has been maintained by the surveyor as highway, and repaired with stones or other materials used in forming highways, for the six months immediately preceding; and the centre of the highway shall be the middle of such highway, where a line being drawn along the highway, or a point marked, an equal number of feet of highway which have been so maintained and repaired as aforesaid for twelve months before shall be found on each side of such line or mark.

65. If the surveyor shall think that any carriage-way or pathway is prejudiced by the shade of any hedges, or by any trees, except those trees planted for ornament or for shelter to any hop-ground, house, building, or court-yard of the owner thereof, growing in or near such hedges or other fences, and that the sun and wind are excluded from such highway, to the damage thereof, or if any obstruction is caused in any carriage-way or cart-way by any hedge or tree, [the justices (y) may on summons] order and direct that such hedges shall be cut, pruned, or plashed, or such trees pruned or lopped, in manner aforesaid, or such obstruction removed, and the said owner shall comply therewith within ten days after a copy of such order shall have been left at the usual place of abode of the said owner (z) or of his steward or agent, and in default thereof shall forfeit, on conviction, a sum not exceeding forty shillings; and the said surveyor, if the order of the said justices is not complied with, shall and he is hereby authorized and required to cut, prune, or plash such hedges, and to prune and lop (a) such trees, for the benefit and improvement of the highway, and to remove such obstruction as aforesaid, to the best of his skill and judgment, and according to the true intent and meaning of this Act; and the said surveyor shall be reimbursed by the owner as aforesaid what charges and expenses he shall be at in cutting, pruning, and plashing such hedges, and pruning and lopping such trees, and the removal of such obstruction, over and above the said forfeiture; . . .

66. Provided always, That no person shall be compelled nor any surveyor permitted to cut or prune any hedge at any other time than between the last day of September and the last day of March; and that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever except where the highways shall be ordered to be widened or enlarged as herein mentioned, or

(x) See *Hardcastle v. Dibley*, 1892, 1 Q. B. 709. He is apparently not liable under this section nor at common law if a road under repair be left without fence or light: *Taylor v. Greenhalgh*, 24 W. R. 311. See *Pendlebury v. Greenhalgh*, 1 Q. B. D. 36; cf. *Fearnley v. Ormsby*, L. R. 4 C. P. D. 136; *Tucker v. Azbridge*, 5 Tl. L. R. 26.

(y) The jurisdiction of the justices appears to be confined to cases where trees

are growing on land next adjoining the carriage-way: *Brook v. Jenny*, 2 Q. B. 265; 6 Q. B. 324.

(z) This means the person in actual occupation: *Woodard v. Billericay*, 11 Ch. D. 214. As to pruning with consent of owner at any time in Wilts, Dorset, Cornwall and Devon, see 48 Vict. c. 13, s. 2.

(a) This does not confer power to top: *Unwin v. Hanson*, 1891, 2 Q. B. 115.

then to cut down or grub up any oak trees growing in such highway or in such hedges except in the months of April, May, or June, or any ash, elm, or other trees in any other months than December, January, February, or March. (b)

Sect. 66.

67. The said surveyor, district surveyor, or assistant surveyor shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses (c) and also to make and lay such trunks, tunnels, plats, or bridges, as he shall deem necessary, in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, (d) provided they are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein directed to be settled and paid.

Surveyor to make and keep open ditches, etc., and to lay trunks, etc., through lands adjoining highway, paying for damage if any incurred.

69. If any person shall encroach by making or causing to be made any building, hedge, ditch, or other fence on any carriage-way or cart-way within the distance of fifteen feet from the centre thereof, (e) every person so offending shall forfeit, on conviction, for every such offence, any sum not exceeding forty shillings; and the surveyor who hath the care of any such carriage-way or cart-way shall and he is hereby required to cause such building, hedge, ditch or fence to be taken down (f) or filled up at the expense of the person to whom the same shall belong; . . .

Penalty for encroaching on highway. Encroachment to be taken down by the surveyor.

72. If any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle, or carriage of any description, or any truck or sledge, upon any such footpath or causeway; or shall tether any horse, ass, mule, swine, or cattle on any highway, so as to suffer or permit the tethered animal to be thereon; or shall cause any injury or damage to be done to the said highway, or the hedges, posts, rails, walls, or fences thereof; or shall wilfully obstruct the passage of any footway, (g) or wilfully destroy or injure the surface of any highway, (h) or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said surveyor as herein directed; or dig or cut down the banks which are the securities and defence of the said highways; or break,

Penalty on persons committing nuisances by riding on footpaths, etc., by injuring the road;

(b) As to injury caused by the removal of a fence see *Whyler v. Bingham*, 83 L. T. 652.

(c) Does not include a dumb-well: *Croft v. Rickmansworth*, 39 Ch. D. 272.

(d) A tender of satisfaction is not a condition precedent to the right of entry: *Peters v. Clarson*, 7 M. & G. 548. The amount of satisfaction must be ascertained by the justices at special sessions: *Ib.*

(e) The erection of a building within fifteen feet of the centre of a carriage-way which has been repaired by the surveyor for the six months preceding, but not on any part of the highway which has been lately used for passage, is not an encroachment: *Chayman v. Robinson*, 1 E. & E. 25; see 27 & 28 Vict. c. 101, s. 51. But the section does apply to any erection which makes the highway less commodious: *Donny v. Thwaites*, L. R. 2 Ex. D. 21; *Evans v. Oakley*, 1 C. & K. 125.

(f) In order that a fence should come within the provisions of this section, it must be within fifteen feet of the centre

of the road, and on the road. A road was nine feet wide, and there being a piece of uninclosed land at the side of it, which was so rough and uneven that no carriage could go over it, the owner of the adjoining field took this land into his field, and put a fence round it. The surveyor of the highway took down the fence: it was held that he was not justified in so doing under this section: *Evans v. Oakley*, 1 Carr. & K. 125; see *Rex v. Gregory*, 5 B. & Ad. 555. The section requires the surveyor to execute a conviction under the Act by pulling down the encroachment; and though not correct, it is a defence to an action of trespass brought against him: *Keane v. Reynolds*, 2 E. & B. 748.

(g) This does not extend to a right to plough up: *Mercer v. Woodgate*, L. R. 5 Q. B. 26; nor to a perambulator: *R. v. Matthias*, 2 F. & F. 570; but there can be no right to erect stalls for refreshments: *Simpson v. Wells*, L. R. 7 Q. B. 214.

(h) This includes a footway over a field: *Brackenborough v. Thorshy*, 19 L. T. 692.

Sect. 72.

by damaging banks, causeways, direction posts, mile-stones, etc.;
by making fires;

by baiting bulls;
by laying timber, etc.;

by running of filth.

Punishing persons guilty of pound-breach.

damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same; or pull down, destroy, obliterate, or deface any milestone or post, graduated or direction post or stone, erected upon any highway; or shall play at football or any other game on any part of the said highways, to the annoyance of any passenger or passengers; (i) or if any hawkers, higgler, gipsy, or other person travelling shall pitch any tent, booth, stall, or stand, or encamp upon any part of any highway: or if any person shall make or assist in making any fire, or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever, (k) within fifty feet of the centre of such carriageway or eartway; (l) or bait or run for the purpose of baiting, any bull upon or near any highway, or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon, or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any house, building, erection, lands, or premises adjacent thereto; or shall in any way wilfully obstruct (m) the free passage of any such highway; (n) every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby. (o)

73. [Matters laid on or near highway so as to be a nuisance to be removed on notice; or on failure, surveyor to dispose of the same by order of a justice.] (p)

75. In case any person shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle which shall be seized for the purpose of being impounded under the authority of this Act from the pound or place where the same shall be so impounded, or in the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release, any distress or levy which shall be made under the authority of this Act, until or before such horse, ass, sheep, swine, or other beast or cattle seized or impounded, or such distress or levy so made, shall be discharged by due course of law, every person so offending shall, upon conviction thereof before any two of his majesty's

(i) See *Pappin v. Maynard*, 9 L. T. 327; *Woolley v. Corbishley*, 24 J. P. 773.

(k) A burning tar-barrel on Guy Fawkes' day is not within the section: *Hill v. Somerset*, 51 J. P. 742.

(l) There must be here injury to the highway or some danger or annoyance to the passengers: *Stinson v. Browning*, 1. R. 1 C. P. 321.

(m) Suffering underwood to grow: *Walker v. Horner*, 45 L. J. M. C. 34; or rain-water to drop from the eaves: *Croas-dill v. Ratcliffe*, 5 L. T. 834; is not within the section but no continuance will make an obstruction lawful: *Gerring v. Barfield*, 16 C. B. N. S. 597; *Gully v. Smith*, 12 Q. B. D. 121.

(n) A roller is an obstruction: *Wilkins v. Day*, 12 Q. B. D. 110; and so are small ditches: *Nicol v. Beaumont*, 53 L. J. Ch. 853; and a person collecting a crowd by addressing them: *Homer v. Cadman*, 55 L. J. M. C. 110. As to the right to preach

on the foreshore see *Llandudno v. Woods*, 1899, 2 Ch. 705; as to bathing: *Brinkman v. Matley*, 1904, 2 Ch. 313; and as to shooting wild fowl: *Fitzhardinge v. Purcell*, 1908, 2 Ch. 139.

(o) This section applies to the metropolis: *Back v. Holmes*, 57 L. J. M. C. 37.

(p) This section does not make it incumbent on the surveyor to remove nuisances. It empowers him to give notice to the parties placing them there to remove them. The Act imposes no obligation on the surveyor to fence places that are dangerous: *per Parke, B., Morgan v. Leach*, 10 M. & W. 558. An order of a justice, is conclusive to show that the *locus in quo* was a highway, so that the plaintiff, in an action against the justice who made the order, cannot dispute his jurisdiction on the ground that it was not a highway: *Mould v. Williams*, 5 Q. B. 469; see *Williams v. Adams*, 31 L. J. M. C. 109; *Mill v. Hawker*, L. R. 10 Ex. 92.

justices of the peace, either upon confession of the party or parties offending, or upon oath of one credible witness, forfeit or pay any sum not exceeding 20*l.*, at the discretion of the said justices, and in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour.

Sect. 75.

76. The owner of every waggon, cart, or other such carriage shall paint or cause to be painted in one or more straight line or lines, upon some conspicuous part of the right or off-side of his waggon, cart, or other such carriage, or upon the off-side shafts thereof, before the same shall be used on any highway, his christian name and surname, or the style and title by which he is commonly designated, and the place of his trade or abode, or the christian and surname and place of trade or abode of a partner or owner thereof, at full length, in large legible letters in white upon black or black upon white, not less than one inch in height, and continue the same thereupon so long as such waggon, cart, or other such carriage shall be used upon any highway; and every owner of any waggon, cart or other such carriage who shall use or allow the same to be used on any highway without the name and descriptions printed thereon as aforesaid, or who shall suffer the same to become illegible, or who shall paint or cause to be painted any false or fictitious name or place of trade or abode on such waggon or cart or other such carriage, shall forfeit and pay, on conviction, for every such offence a sum not exceeding 40*s.*, with or without costs, as to the justices before whom the conviction shall take place shall think fit.

Names of owners to be painted on all waggons, etc., in the manner herein mentioned.

77. No one person shall act as the driver of more than two carts, waggons, or any such carriages on any highway: Provided always, that it shall and may be lawful for any one person to act as the driver of two carts, waggons, or other such carriages on any highway, and for such carts to pass and travel on any highway being only under the care and superintendence of such single person: Provided always, that such carts, waggons, or other carriages, when under the care of only one person, shall not be drawn by more than one horse each, and the horse of the hinder cart, waggon, or other carriage shall be attached by a rein in length not exceeding four feet to the back of the cart, waggon, or other carriage which shall be foremost; and in case the said horse shall not be so attached, the driver of the said carts, waggons, or other carriages shall forfeit, on conviction, the sum of 20*s.* to be recovered as other penalties are by this Act to be recovered.

One driver may take charge of two carts, provided they are drawn only by one horse each.

78. If the driver of any waggon, cart, or other carriage of any kind shall ride upon any such carriage, or upon any horse or horses drawing the same, on any highway, not having some other person on foot or on horseback to guide the same (such carriages and carts as are driven with reins, and are conducted by some person holding the reins of all the horses drawing the same, excepted); or if the driver of any carriage (g) whatsoever on any part of any highway shall by negligence or wilful misbehaviour cause any hurt or damage to any person, horse, cattle, or goods conveyed in any carriage passing or being upon such highway, or shall quit the same and go on the other side of the hedge or fence inclosing the same, or negligently or wilfully be at such distance from such carriage or in such a situation whilst it shall be passing upon such highway that he cannot have the direction and government of the horses or cattle drawing the same, or shall leave any cart or carriage on such highway so as to obstruct

Drivers of waggons or carts not to ride thereon unless some other person guide them.

Drivers causing hurt or damage to others, or quitting the road, or driving

(g) A bicycle is a carriage: 51 & 52 Vict. c. 41, s. 85; *Hatton v. Treeby*, 1897, 2 Q. B. 452; and furious riding is punish-

able under the section: *Williams v. Evans*, L. R. 1 Ex. D. 277.

Sect. 78.

carriage without owner's name, or not keeping the left or near side, or interrupting free passage, if not the owner, to forfeit 20s.; if he be the owner, 40s.

the passage thereof; or if any person shall drive or act as the driver of any waggon, cart, or other such carriage not having the owner's name as hereby required painted and remaining legible thereon, and shall refuse to tell or to discover the true christian and surname of the owner or principal owners of such waggon, cart, or carriage; (r) or if the driver of any waggon, cart, or other carriage whatsoever, or of any horses, mules, or other beasts of draught or burthen meeting any other waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, shall not keep his waggon, cart, or carriage, or horses, mules, or other beasts of burthen on the left or near side of the road; or if any person shall in any manner wilfully prevent any other person from passing him, or any waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, under his care, upon such highway, or by negligence or misbehaviour, (s) prevent, hinder, or interrupt the free passage of any person, waggon, cart, or other carriage, or horses, mules, or other beasts of burthen, on any highway, or shall not keep his waggon, cart, or other carriage, horses, mules, or other beasts of burthen on the left or near side of the road, for the purpose of allowing such passage; or if any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously so as to endanger the life or limb of any passenger; every person so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a justice, or by the oath of one or more credible witnesses, before any two justices of the peace, shall, in addition to any civil action to which he may make himself liable, for every such offence forfeit any sum not exceeding five pounds in case such driver shall not be the owner of such waggon, cart, or other carriage, and in case the offender be the owner of such waggon, cart, or other carriage, then any sum not exceeding ten pounds, and in either of the said cases shall, in default of payment, be committed to the common gaol or house of correction, there to be kept to hard labour, for any time not exceeding six calendar weeks, unless such forfeiture shall be sooner paid; and every such driver offending in either of the said cases shall and may, by the authority of this Act, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be conveyed before any justice of the peace, to be dealt with according to law; and if any such driver in any of the cases aforesaid shall refuse to discover his name, (t) it shall and may be lawful for the said justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the common gaol or house of correction, there to be kept to hard labour, for any time not exceeding three months, or to proceed against him for the penalty aforesaid by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name.

Proceeding if driver will not discover his name.

For securing unknown offenders.

79. "And whereas offences may be committed against this Act by persons whose names are unknown to the surveyor, assistant surveyor, or district surveyor;" it shall be lawful for the surveyor, assistant surveyor, or district surveyor, or any person acting under his authority, and such other person as he

(r) Where a carriage is liable to excise duty the name is not necessary: *Danby v. Hunter*, 5 Q. B. D. 20; but there need be no intention to defraud to complete the offence of driving without the owner's name: *Whitrow v. Brown*, 56 J. P. 374.

(s) As to reckless driving of motor-cars see 3 Ed. VII. c. 36, s. 1.

(t) Where the driver having placed himself before the board on which his

master's name was painted, so as to prevent the discovery of the owner, the justice, in order to ascertain the name, stopped the horses, and laid hands on the driver, and removed him from his position before the board, and thereby informed himself of the ownership, it was held, on demurrer, that this was a trespass, and gave the driver a right of action: *Jones v. Owen*, 2 D. & R. 600.

shall call to his assistance, or any other person witnessing the commission of the offence, without any other authority than this Act, to seize and detain such unknown person who shall commit any such offence, and take him forthwith before any justice of the peace, who shall proceed and act with respect to such offence according to the provisions of this Act.

Sect. 79.

84. [Previous to a highway being stopped up, etc., surveyor to request justices to view the same.] (u)

85. [Proceedings (x) for diverting, etc., certain highways, and stopping up unnecessary highways.] (y)

92. Provided always, That in every case in which a highway shall have been turned or diverted under the provisions of this Act, the parish or other party which was liable to the repair of the old highway, shall be liable to the repair of the new highway, without any reference whatever to its parochial locality.

Party liable to repair of old highways to repair new highways.

93. [Provisions as to widening of a highway to extend to all highways which persons are bound to repair, *ratione tenuræ*, etc. Justices to fix annual or other amount payable by party previously bound to repair.]

112. [This Act not to extend to metropolis.]

113. Provided always, That nothing in this Act contained shall apply to any turnpike roads, except where expressly mentioned, or to any roads, bridges, carriage-ways, cartways, horseways, bridle-ways, footways, causeways, church-ways, or pavements, which now are or may hereafter be paved, repaired, or cleansed, broken up, or diverted, under or by virtue of the provisions of any local or personal Act or Acts of Parliament.

Not to extend to turnpike roads, or to roads under local Acts.

114. Provided always, That nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of Oxford or Cambridge, or any of the powers vested by charter or otherwise in the chancellors, masters, and scholars, and their successors, of the said universities.

Not to affect the universities;

115. Provided always, That nothing in this Act contained shall extend to alter or in any manner to affect the city of London and the liberties thereof, or the rights, interests, privileges, franchises, or authorities of the mayor and commonalty and citizens of the city of London, or their successors, or the lord mayor and aldermen of the said city, or the lord mayor of the said city for the time being as conservator of the river Thames or otherwise, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of making this Act the said mayor and commonalty and citizens, the said lord mayor, and aldermen of the said city, or the said lord mayor for the time being as conservator of the river Thames or otherwise, did or might lawfully claim, use, or exercise by any Act of parliament or otherwise, or to vary or alter any of the provisions or regulations thereby made, directed, or provided, within the said city of London and the liberties thereof, anything herein contained to the contrary thereof in anywise notwithstanding.

nor the rights and liberties of the city of London;

(u) See *Reg. v. Worcestershire Justices*, 23 L. J. M. C. 113.

(x) Actual inspection is the foundation of the jurisdiction: *Rex v. Marquis of Downshire*, 4 Ad. & E. 721. In *Rex v. Justices of Cambridgeshire*, 4 ib. 111 it was decided, that justices could not make an order for stopping up unless the finding that it was unnecessary was the result of that view: see *Rex v. Worcestershire Justices*, 8 B. & C. 254; *Rex v. Kent Justices*, 10 B. & C. 477.

(y) In *Rex v. The Justices of Middlesex*, 5 A. & E. 626, it was held, that an order of justices under the 55 Geo. III. c. 68, for diverting a public footway and substituting a new one, and for stopping up the old footway, was void. See *Rex v. Inhabitants of Milverton*, 5 Ad. & E. 841. It would seem that the justices have no power to stop up a road out of the division or hundred for which they act. See *R. v. Surrey J.J.*, 1892, 1 Q. B. 867; *R. v. Kent J.J.*, 1905, 1 K. B. 378.

Sect. 116.

nor the Act
1 G. IV, c. 7.
Powers of
commis-
sioners of
sewers not
abridged.

116. [This Act not to extend to County of Montgomery, so far as the same relates to the repairs of so much of the highways as lie next adjoining to any ends of any bridges within the said county.]

117. Provided always, That nothing in this Act contained shall extend to or be deemed or construed to extend to alter, affect, restrain, or abridge the powers or authorities given to the commissioners of sewers by any Act of parliament whatsoever, or to vary or alter any of the provisions or regulations thereby made, directed, or provided, anything herein contained to the contrary thereof in anywise notwithstanding.

These officers may inspect platforms erected on public occasions, under the Public Health Amendment Act where that Act is adopted, (z) and may enter premises for the purpose of surveying and valuing which the local authority are entitled to take under the Housing of the Working Classes Act at all reasonable times by day on giving 24 hours' notice. (a)

The following are the powers under the Public Health Act, 1875:—

PART I

Preliminary

Public Health. By sec. 2 this Act shall not extend . . . (save as by this Act expressly provided) to the metropolis.

Definitions. 4. In this Act if not inconsistent with the context the following words and expressions have the meanings herein-after respectively assigned to them; that is to say—

“Borough” means any place for the time being subject to the Act of the session of the 45th and 46th years of the reign of queen Victoria, cap. 50, intituled “An Act for consolidating with amendments enactments relating to Municipal Corporations in England and Wales,” and any Act amending the same:

18 & 19 Vict.
c. 120.

“The metropolis” means the city of London and all parishes and places mentioned in Schedules A, B, and C (b) to the Metropolis Management Act, 1855:

“Local Government District” means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act, and “local board” means any board so constituted: (c)

“Improvement Act district” means any area for the time being subject to the jurisdiction of any improvement commissioners as herein-after defined:

(z) 53 & 54 Vict. c. 59, s. 37.

(a) C. 70, s. 77. The liability of the local authority is no greater than that of the surveyor was: *Gibson v. Preston*, L. R. 5 Q. B. 218; *Parsons v. Bethnal Green*, L. R. 3 C. P. 56; *Cowley v. Newmarket*, 1892, A. C. 345. See *Lambert v.*

Lowestoft, 1901, 1 Q. B. 590; *Hartinson v. Armagh*, 1902, 2 I. R. 538; *Maguire v. Liverpool*, 1905, 1 K. B. 767.

(b) Now the county and borough councils.

(c) See 7 Ed. VII. c. 53, s. 13, *post*.

"Improvement Commissioners" means any commissioners trustees or other persons invested by any local Act with powers of town government and rating :

"Parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :

"Union" means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians :

"Guardians" means any persons or body of persons by whom the relief of the poor is administered in any union :

"Person" includes any body of persons, whether corporate or unincorporate :

"Local authority" means urban sanitary authority and rural sanitary authority : (d)

"Surveyor" includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act : (d)

"Lands" and "Premises" include messuages buildings lands casements and hereditaments of any tenure : (d)

"Owner" means the person for the time being receiving the rackrent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, (e) or who would so receive the same if such lands or premises were let at a rackrent : (f)

"Rackrent" means rent which is not less than two thirds of the full net annual value of the property out of which the rent arises ; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent :

"Street" includes any highway, (g) and any public bridge (not being a county bridge), and any road (h) lane footway square court alley or passage (i) whether a thoroughfare or not :

"House" includes schools, also factories and other buildings in which . . . persons are employed . . .

"Drain" means any drain of and used for the drainage of one building only, (j) or premises within the same curtilage, (k) and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed :

(d) See 7 Ed. VII. c. 53, s. 13, *post*.

(e) See *St. Helen's v. Kirkham*, 16 Q. B. D. 403. It does not include a receiver: *Bacup v. Smith*, 44 Ch. D. 395. As to mortgagee in possession see *Tottenham v. Wilkinson*, 62 L. J. Q. B. 322.

(f) See *Sale v. Phillips*, 1894, 1 Q. B. 349.

(g) See *Taylor v. Oldham*, 4 Ch. D. 408; *Baker v. Portsmouth*, 3 Ex. D. 157.

(h) See *Fenwick v. Croydon*, 1891, 2 Q. B. 216.

(i) *R. v. Goole*, *ib.* 212. It is a question of fact in each case: *Eccles v. Wirral*, 17 Q. B. D. 107; cf. *Simmonds v. Fulham*, 1900, 2 Q. B. 188.

(j) A question of fact in each case *Humphrey v. Young*, 1903, 1 K. B. 44.

(k) See *Pillrow v. St. Leonards*, 1895, 1 Q. B. 433; *St. Martin's v. Bird*, *ib.* 428.

Sect 4.

"Sewer" includes sewers (*l*) and drains (*m*) of every description, (*n*) except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act: (*o*)

"Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers yards, and any building or place used for slaughtering cattle horses or animals of any description for sale:

"Water company" means any persons or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit: (*p*)

"Waterworks" includes streams (*q*) springs wells pumps reservoirs cisterns tanks aqueducts cuts sluices mains pipes culverts engines and all machinery lands buildings and things for supplying or used for supplying water, also the stock in trade of any water company:

"Baths and Wash-houses Acts" means 9 & 10 Vict. c. 74 (An Act to encourage the establishment of Public Baths and Wash-houses); 10 & 11 Vict. c. 61 (An Act to amend the Act for the establishment of Public Baths and Wash-houses).

PART II

Authorities for Execution of Act

Powers and
duties of urban
authorities.

10. In addition to the powers rights duties capacities liabilities and obligations exercisable by or attaching to an urban authority under this Act, every urban authority shall within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exercisable or attaching by and to the local authority under the Bakehouse Regulation Act, (*r*) and the Artizans and Labourers Dwellings Act, (*s*) or any Acts amending the same.

Where the Baths and Wash-houses Acts, or any of them, are in force within the district of any urban authority, such authority shall have all powers rights duties capacities liabilities and obligations in relation to such Acts exercisable by or attaching to the council incorporated commissioners local board improvement commissioners and other commissioners or persons acting in the execution of the said Acts or any of them.

Where the Baths and Wash-houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts; and where the Labouring Classes Lodging Houses Acts (*s*) are not in force within the district of any urban authority, such authority may adopt such Acts.

(*l*) A stream supplied by the drainage natural and artificial of cultivated land and receiving the drainage of 2 or 3 inhabited houses in its passage to the river into which it flows is not a sewer: *R. v. Godmanchester*, L. R. 1 Q. B. 328. Nor is a drain in the highway receiving sewage of one house: *Wincanton v. Parsons*, 1905, 2 K. B. 34.

(*m*) *E.g.* a drain passing through private ground but receiving the drainage of more than one building: *Travis v. Uitley*, 1894, 1 Q. B. 233. See *Beckenham v. Wood*, 60 J. P. 490. It may be open or

closed: *Pakenham v. Ticehurst*, 67 J. P. 448; *Wheatcroft v. Matlock*, 52 L. T. 356.

(*n*) User is apparently not essential: *Turner v. Handsworth*, 1909, 1 Ch. 381.

(*o*) *Williamson v. Durham*, 1906, 2 K. B. 65.

(*p*) See *Wolverhampton v. Bilston*, 1891, 1 Ch. 315.

(*q*) Not water percolating through the ground: *McNab v. Robertson*, 1897, A. C. 129.

(*r*) See now 1 Ed. VII. c. 22, s. 102.

(*s*) 53 & 54 Vict. c. 70.

Where any local Act other than an Act for the conservancy of any river is in force within the district of an urban authority, conferring on any commissioners trustees or other persons powers for purposes the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers rights duties capacities liabilities and obligations of such commissioners trustees or other persons in relation to such purposes shall be transferred and attach to the said urban authority. Sect. 10.

11. In addition to the powers rights duties capacities liabilities and obligations exercisable by or attaching to a rural authority under this Act, every rural authority shall, within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exercisable by or attaching to the local authority under the Bakehouse Regulation Act, (t) or any Acts amending the same. Powers and duties of rural authorities.

PART III

SANITARY PROVISIONS

SEWERAGE AND DRAINAGE

Regulations as to Sewers and Drains

13. All existing and future sewers within the district of a local authority, together with all buildings works materials and things belonging thereto, Sewers vested in local authority.
Except—

- (1.) Sewers made by any person for his own profit, (u) or by any company for the profit of the shareholders; (w) and
- (2.) Sewers made and used for the purpose of draining preserving or improving land under any local or private Act of Parliament, (x) or for the purpose of irrigating land; (y) and
- (3.) Sewers under the authority of any commissioners of sewers appointed by the Crown,

shall vest in and be under the control of such local authority. (z)

Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same or to whom the same have been transferred.

15. Every local authority shall keep in repair all sewers belonging to them, Maintenance and making of sewers.

(t) See now 1 Ed. VII. c. 22, s. 102.

(u) Sewer includes a drain of more than one house: *Acton v. Batten*, 28 Q. B. D. 283. A sewer in a new street is not made for a person's own profit and if taken over by the authority and not objected to within a reasonable time they cannot then call on the frontagers to re-sewer: *Bonella v. Twickenham*, 20 Q. B. D. 63; *Hornsey v. Davis*, 1893, 1 Q. B. 756. And see *Minchhead v. Luttrell*, 1894, 2 Ch. 178.

(w) The profit is not to be restricted to

a direct monetary payment: *Sykes v. Sowerby*, 1900, 1 Q. B. 584; *Croysdale v. Sunbury*, 1898, 2 Ch. 515.

(x) See *L. & N. W. Ry. v. Runcorn*, 1898, 1 Ch. 561.

(y) See *R. v. Golmanchester*, 35 L. J. Q. B. 125.

(z) A sewer means something which carries sewage away—not pipes leading to a cesspit: *Meador v. W. Cowes*, 1892, 3 Ch. 18. See *Ferrand v. Hallas*, 1893, 2 Q. B. 135. As to liability see *White v. Hindley*, L. R. 10 Q. B. 219.

Sect. 15. and shall cause to be made such sewers as may be necessary for effectually draining (a) their district (b) for the purposes of this Act, (c)

Powers for making sewers. 16. Any local authority may carry any sewer through across or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), (d) into through or under any lands whatsoever within their district. (e)

They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

Sewage to be purified before being discharged into streams. 17. Nothing in this Act shall authorize any local authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water (f) into any natural stream or watercourse, or into any canal pond or lake (g) until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse or in such canal pond or lake.

Alteration and discontinuance of sewers. 18. Any local authority may from time to time enlarge lessen alter the course of cover or otherwise improve any sewer belonging to them, and may discontinue close up or destroy any such sewer that has in their opinion become unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided that the discontinuance closing up or destruction of any sewer shall be so done as not to create a nuisance.

Cleansing sewers. 19. Every local authority shall cause the sewers belonging to them to be constructed covered ventilated and kept so as not to be a nuisance (h) or injurious to health, (i) and to be properly cleansed and emptied. (k)

(a) See *Brown v. Sargent*, 1 F. & F. 112, and *R. v. Tynemouth*, 1896, 2 Q. B. 451.

(b) The remedy of a person aggrieved is complaint to the Local Government Board: *Robinson v. Workington*, 1897, 1 Q. B. 619; *Pasmore v. Oswaldtwistle*, 1898, A. C. 387; *Harrington v. Derby*, 1905, 1 Ch. 205. But where there is a diversion of sewage to the damage of an occupier an action will lie: *Dent v. Bournemouth*, 66 L. J. Q. B. 395.

(c) See *Glossop v. Heston*, 12 Ch. D. 102; *Att.-Gen. v. Dorking*, 20 ib. 595.

(d) Necessary means for the efficient discharge of the duty in the way most for the public benefit: *Lewis v. Weston*, 40 Ch. D. 55. They need not purchase the lands: *Roderick v. Aston*, 5 Ch. D. 328; but a sewer must not amount to a nuisance: *Lamacraft v. St. Thomas*, 42 L. T. 365; *Havethorn v. Kannulink*, 1906, A. C. 105.

(e) This does not include a pumping-station: *King's Coll. v. Uxbridge*, 1901, 2 Ch. 768. See *Taylor v. Oldham*, 4 Ch. D. 395.

(f) Does not include surface water: *Durrant v. Branksome*, 1897, 2 Ch. 291.

(g) The works must be executed so as not to interfere with the private rights of individuals, otherwise an injunction will

be granted: *Att.-Gen. v. Birmingham*, 4 K. & J. 528. Where a stream is polluted already an injunction may notwithstanding be obtained against further pollution: *Att.-Gen. v. Leeds*, L. R. 5 Ch. 583; *Att.-Gen. v. Birmingham*, 1908, 2 Ch. 551. Where authority is conferred by a local Act to discharge sewage into streams it must be ascertained whether this or some similar enactment is not incorporated therewith: *Holt v. Rochdale*, L. R. 10 Eq. 354; *Lea v. Hertford*, 1 C. & E. 299. See also 56 & 57 Vict. c. 31.

(h) Where powers are conferred under circumstances in which they may be exercised without causing a nuisance and new and unforeseen circumstances arise which render their exercise impossible without causing a nuisance an indictment will lie: *R. v. Bradford*, 6 B. & S. 648. As to discharge into the sea causing damage see *Foster v. Warblington*, 1906, 1 K. B. 648.

(i) See *Wilkinson v. Llanlaff*, 1903, 2 Ch. 695.

(k) See *Hammond v. St. Pancras*, L. R. 9 C. P. 316; *Stretton's Brewery v. Derby Corp.*, 1894, 1 Ch. 431. The remedy under this section is by action: *Baron v. Portslade*, 1900, 2 Q. B. 588.

20. An urban authority may, if they think fit, provide a map exhibiting a system of sewerage for effectually draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the ratepayers of their district. Sect. 20.
Map of system of sewerage.

21. The owner or occupier of any premises within the district of a local authority shall be entitled to cause his drains to empty into the sewers ^(l) of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications. ^(m) Power of owners and occupiers within district to drain into sewers of local authority.

Any person causing a drain to empty into a sewer of a local authority without complying with the provisions of this section shall be liable to a penalty not exceeding twenty pounds, and the local authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section. ⁽ⁿ⁾

22. The owner or occupier of any premises without the district of a local authority may cause any sewer or drain from such premises to communicate with any sewer of the local authority on such terms and conditions as may be agreed on between such owner or occupier and such local authority, or as in case of dispute may be settled, at the option of the owner or occupier, by a court of summary jurisdiction or by arbitration in manner provided by this Act. ^(o) Use of sewers by owners and occupiers without district.

23. Where any house within the district of a local authority is without a drain sufficient for effectual drainage, the local authority shall by written notice require the owner or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than one hundred feet from the site of such house; ^(p) but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the local authority direct; and the local authority may require any such drain or drains to be of such materials and size, and to be laid at such level, and with such fall as on the report of their surveyor may appear to them to be necessary. Power of local authority to enforce drainage of undrained houses.

If such notice is not complied with, the local authority may, after the expiration of the time specified in the notice, do the work required, and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses. ^(q)

Provided that where, in the opinion of the local authority, greater expense

(l) This does not apply in the case of a surface-water drain: *Kinson Pottery Co. v. Poole*, 1899, 2 Q. B. 41; nor to a sewer become so by reason of two or more buildings draining into it: *Wood v. Ealing*, 1907, 2 K. B. 390.

(m) Drains cannot be disconnected by the local authority unless the connexion has been made contrary to the provisions of the Act: *Ainley v. Kirkheaton*, 60 L. J. Ch. 734; *Brown v. Dunstable*, 1899, 2 Ch. 378.

(n) As to refusal to receive trade effluents into sewers see *Eastwood v. Honley*, 1901, 1 Ch. 645; *Brook v. Meltham*, 1908, 2 K. B. 780.

(o) See *Newington v. Cottingham*, 12 Ch. D. 725.

(p) See *Wright v. Wallasey*, 18 Q. B. D. 783.

(q) They are liable for damage caused by negligent construction: *Hall v. Batley*, 47 L. J. Q. B. 148.

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would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer, and require the owners or occupiers of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or may by order declare the same to be private improvement expenses.

Power of local authority to require houses to be drained into new sewers.

24. Where any house within the district of a local authority has a drain communicating with any sewer, which drain though sufficient for the effectual drainage of the house is not adapted to the general sewerage system of the district, or is in the opinion of the local authority otherwise objectionable, the local authority may, on condition of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose, and the expenses of those works, and of the construction of any drain or drains provided by them under this section, shall be deemed to be expenses properly incurred by them in the execution of this Act.

Penalty on unauthorized building over sewers and under streets in urban district.

26. Any person who in any urban district, without the written consent of the urban authority—

(1.) Causes any building to be newly erected over any sewer of the urban authority; or,

(2.) Causes any vault arch or cellar to be newly built or constructed under the carriageway of any street,

shall forfeit to the urban authority the sum of five pounds and a further sum of forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority; and the urban authority may cause any building vault arch or cellar erected or constructed in contravention of this section to be altered pulled down or otherwise dealt with as they may think fit, and may recover in a summary manner any expenses incurred by them in so doing from the offender.

32. [Notice to be given before commencing sewage works without district.]

33. [In case of objection, works not to be commenced without sanction of Local Government Board.]

Privies, Waterclosets, etc.

Power of local authority to enforce provision of privy accommodation for houses.

36. If a house within the district of a local authority appears to such authority by the report of their surveyor or inspector of nuisances to be without a sufficient watercloset earthcloset or privy and an ashpit (r) furnished with proper doors and coverings, the local authority shall, by written notice, require the owner or occupier of the house, within a reasonable time therein specified, to provide a sufficient watercloset earthcloset or privy and an ashpit furnished as aforesaid, or either of them, as the case may require. (s)

If such notice is not complied with, the local authority may, at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses: Provided that where a watercloset earthcloset or privy has been and is used in common by the inmates of two or more houses, or if in the opinion

(r) Sec 53 & 54 Vict. c. 59, s. 11, and 7 Ed. VII. c. 53, s. 39, *post*.

(s) Where the question is as to suffi-

ciency the remedy is by appeal to the Local Government Board: *Robinson v. Sunderland*, 1899, 1 Q. B. 751.

of the local authority a watercloset earthcloset or privy may be so used, they need not require the same to be provided for each house. (t) Sect. 36.

37. Any enactment in force within the district of any local authority requiring the construction of a watercloset shall be deemed to be satisfied by the construction, with the approval of the local authority, of an earthcloset. As to earth-closets.

Any local authority may, as respects any house in which any earthcloset is in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to any watercloset in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water.

Any local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorizing substance to any house within their district for the purpose of any earthcloset.

In this Act the term "earthcloset" includes any place for the reception and deodorization of fecal matter constructed to the satisfaction of the local authority.

38. [Privy accommodation for factories to be sufficient.]

40. Every local authority shall provide that all drains waterclosets earth-closets privies ashpits and cesspools within their district be constructed and kept so as not to be a nuisance or injurious to health. Drains, privies, etc., to be properly kept.

41. On the written application of any person to a local authority, stating that any drain (u) watercloset earthcloset privy ashpit or cesspool on or belonging to any premises within their district is a nuisance or injurious to health or where on the report in writing of their surveyor or inspector of nuisances the local authority have reason to suspect that any such drain watercloset, earthcloset privy ashpit or cesspool is a nuisance or injurious to health (x) the local authority may, by writing, empower their surveyor or inspector of nuisances, after twenty-four hours written notice to the occupier of such premises, or in case of emergency without notice, to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain watercloset earthcloset privy ashpit or cesspool. If the drain watercloset earthcloset privy ashpit or cesspool on examination is found to be in a proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the local authority. If the drain watercloset privy ashpit or cesspool on examination appear to be in bad condition, or to require alteration or amendment, (y) the local authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the local authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses. (z)

Examination of drains, privies, etc., on complaint of nuisance.

(t) This section does not empower the authority to enforce a general resolution that in all such cases within their jurisdiction a particular system shall be adopted; but they are bound to exercise their discretion in each particular case: *Wood v. Wilnes*, 1898, 1 Q. B. 463. See *Nicholl v. Epping*, 1899, 1 Ch. 844.

(u) It is no objection to the notice that several houses are drained thereby: *Lan-*

caster v. Barnes, 1898, 1 Q. B. 855. See *Bromley v. Cheshire*, 1908, 1 K. B. 680.

(x) 7 Ed. VII. c. 53, s. 34.

(y) Where it amounts to a nuisance this power includes structural alterations: *Southwold v. Crowdy*, 67 J. P. 278. And see *Fulham v. Solomon*, 1896, 1 Q. B. 198.

(z) See 53 & 54 Vict. c. 59, s. 19, *post*, p. 310.

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SCAVENGING AND CLEANSING

Regulations as to Streets and Houses

Local authority to provide for cleansing of streets and removal of refuse.

42. Every local authority may, and when required by order of the Local Government Board shall, themselves undertake or contract for—

The removal of house refuse (a) from premises;

The cleansing of earthclosets privies ashpits and (b) cesspools; either for the whole or any part of their district : Moreover every urban authority and any rural authority invested by the Local Government Board with the requisite powers may, and when required by order of the said Board shall, themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district.

All matters collected by the local authority or contractor in pursuance of this section may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act ; and any profits thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under this section by that authority in such contributory place are defrayed.

If any person removes or obstructs the local authority or contractor in removing any matters by this section authorized to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding five pounds : Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance.

Penalty on neglect of local authority to remove refuse, etc.

43. If a local authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earthclosets privies ashpits and cesspools fail, without reasonable excuse, after notice in writing from the occupier of any house within their district requiring them to remove any house refuse or to cleanse any earthcloset privy ashpit or cesspool belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding five shillings for every day during which such default continues after the expiration of the said period. (c)

Houses to be purified, on certificate of officer of health, or of two medical practitioners.

46. Where, on the certificate of the medical officer of health or of any two medical practitioners, it appears to any local authority that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing cleansing or purifying of any house or part thereof would tend to prevent or check infectious disease, the local authority shall give notice in writing to the owner or occupier of such house or part thereof to whitewash cleanse or purify the same, as the case may require.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default ; and the local

(a) Does not include cliukers from a steam laundry : *London Co. v. Willesden*, 1892, 2 Q. B. 271.

(b) This word is used distributively :

Stainland v. Stainland, 1906, 1 K. B. 233. See *Pegg v. Derby*, 1909, W. N. 158.

(c) Cf. *Snunders v. Holborn*, post, p. 352.

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authority may if they think fit, cause such house or part thereof to be white-washed, cleansed or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default. (d)

47. Any person who in any urban district—

- (1.) Keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person: (e) or
- (2.) Suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice to him from the urban authority to remove the same; or
- (3.) Allows the contents of any watercloset, privy or cesspool to overflow or soak therefrom,

Penalty in respect of certain nuisances on premises.

shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which the offence is continued, and the urban authority shall abate or cause to be abated every such nuisance, and may recover in a summary manner the expenses incurred by them in so doing from the occupier of the premises on which the nuisance exists.

Offensive Ditches and Collections of Matter

48. [Provision for obtaining order for cleansing offensive ditches lying near to or forming the boundaries of districts.]

49. Where in any urban district it appears to the inspector of nuisances that any accumulation of manure, dung, soil or filth or other offensive or noxious matter ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if such notice is not complied with within twenty-four hours from the service thereof, the manure, dung, soil or filth or matter referred to shall be vested in and be sold or disposed of by the urban authority, and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed.

Removal of filth on certificate of inspector of nuisances.

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner from the person to whom the accumulation belongs, or from the occupier of the premises, or (where there is no occupier) from the owner. (f)

WATER SUPPLY

Powers of Local Authority in relation to Supply of Water

51. [General powers for supplying district with water.]

52. [Restriction on construction of waterworks by local authority to whom company unable to afford proper and sufficient supply.]

53. At least two months before commencing to construct under the provisions of this Act any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons) the local authority shall give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed.

As to construction of reservoirs.

(d) As to workshops see 1 Ed. VII. c. 22, s. 125.

8 Q. B. D. 97.

(e) It is not necessary that there should be any injury to health: *Banbury v. Page*,

(f) See *Att.-Gen. v. Tod-Heatley*, post, p. 353.

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If any person who would be affected by the intended work objects to such work, and serves notice in writing of such objection on the local authority at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as herein-after mentioned, unless such objection is withdrawn.

The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing with such modifications (if any) as they may deem necessary the intended work.

Power of
carrying
mains.

54. Where a local authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force. (*g*)

As to supply
of water.

55. A local authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water; and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the district or part of the district supplied.

Power to
charge water
rates and rents.

56. Where a local authority supply water to any premises they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises ascertained in the manner by this Act prescribed with respect to general district rates; (*h*) moreover they may enter into agreements for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates.

Incorporation
of certain pro-
visions of
Waterworks
Clauses Acts,
26 & 27 Vict.
c. 93.
10 & 11 Vict.
c. 17.

57. For the purpose of enabling any local authority to supply water there shall be incorporated (*i*) with this Act the Waterworks Clauses Act, 1863, and the following provisions of the Waterworks Clauses Act, 1847; (namely.)

“With respect” (where the local authority have not the control of the streets) “to the breaking up of streets for the purpose of laying
“pipes” (*k*) and

“With respect to the communication pipes to be laid by the undertakers”;
and

“With respect to the communication pipes to be laid by the inhabitants”;
and

“With respect to waste or misuse of the water supplied by the undertakers”; and

“With respect to the provision for guarding against fouling the water of the undertakers”; and

“With respect to the payment and recovery of the water rates.”

(*g*) See *Hill v. Wallasey*, 1894, 1 Ch. 133. Without the district it is subject to the provisions of ss. 32 & 33, *ante*: *Jones v. Conway*, 1893, 2 Ch. 603.

(*h*) See ss. 207–227.

(*i*) As to the incorporation of parts of

Acts see *R. v. St. Luke's*, L. R. 7 Q. B. 148.

(*k*) These sections have since the Local Government Act, 1894, little or no application.

Provided,—

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That the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof; and

That any dispute authorized or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a court of summary jurisdiction; and

That section forty-four of the Waterworks Clauses Act, 1847, shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner," were omitted therefrom; and any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner.

10 & 11 Vict. c. 17 (The Waterworks Clauses Act, 1847)

And with respect to the communication pipes to be laid by the undertakers, *Pipes to be laid by the undertakers.* be it enacted as follows:

44. The undertakers shall, upon the request of the owner of any dwelling house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier, and upon payment or tender of the proportion of water-rate in respect of such house by this or the special Act [*i.e.* for the construction of waterworks] made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic (*l*) or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for his domestic purposes from the undertakers; and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent as shall be agreed upon, or, in case of dispute, as shall be settled by such inspector as aforesaid [*i.e.* appointed by the local authority], when appointed, and in the meantime as shall in England or Ireland be settled by two justices, and in Scotland by the sheriff; and such rent shall be chargeable on and recoverable from the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates; and such pipes and other works shall not be subject to distress or to the landlord's hypothec for rent, nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions herein-after contained. *Undertakers to lay down communication pipes, on request of occupier, and on payment of rate payable in advance, for supply of houses of limited value. Rent for such pipes.*

45. If, upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds, and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid. *Such pipes, etc., not liable to distraint for rent, etc.*

(*l*) The question is what is the character of the purpose not what is the character of the place of user. It includes user not merely for washing drinking flushing closets and the like but also for the amenities of the house, to be ascer-

tained with due regard to what is reasonable and what is the ordinary user in our day: *South-West Co. v. St. Marylebone*, 1904, 2 K. B. 184; *Barnard Castle v. Wilson*, 1902, 2 Ch. 746; *Pidgeon v. Gt. Yarmouth*, 1902, 1 K. B. 310.

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On non-payment of rate, or if house be unoccupied, undertakers may remove pipes, etc., provided by them, and recover expenses of providing the same from owners or occupiers.

No greater sum to be recovered from occupiers than amount of rent due.

Occupiers paying may deduct the amount from their rent.

Owner to be at liberty to purchase the pipes.

46. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines; and if such owner, after ten days notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works; and the balance of such principal money, after deducting the value of such pipes and other works, with all arrear of rent for such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the occupier for the time being, in the same manner as water rates are directed by this or the special Act to be recovered: Provided always, that no greater sum shall be recovered from any such occupier than the amount of rent for the time being owing by him, unless he refuse to discover the amount of rent owing by him; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid on demand.

47. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent at that time due in respect thereof, and thereupon such pipes and work shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

And with respect to the communication pipes to be laid by the inhabitants, be it enacted as follows:

Pipes to be laid by the inhabitants.

Power to inhabitants to lay service pipes from houses to pipes of undertakers.

Pipes to be of strength, &c., approved by undertakers.

Notice to be given.

Communication with the pipes of the undertakers to be made under the superintendence of their surveyor.

48. Any owner or occupier of any dwelling house or part of a dwelling house within the limits of the special Act who shall wish to have water from the waterworks of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground, and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers or, in case of dispute, to be settled in England or Ireland by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid: Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days notice of his intention to do so.

49. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in England or Ireland be settled by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid.

Bore of service pipes.

50. The bore of any such pipe as last aforesaid shall not exceed the prescribed

limits, and where no limit shall be prescribed it shall not exceed half an inch, **Sect. 50.**
except with the consent of the undertakers.

51. Any person who shall have laid down any pipe or other works, or who shall have become the proprietor thereof, may remove the same, after having first given six days notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal, and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

Service pipes may be removed after giving notice.

Penalty for removing pipes without notice.

52. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house, building, or premises, and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be, and making compensation for any damage done in the execution of any such work: Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control, restriction, and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this (*m*) or the special Act.

Power to inhabitants to break up pavements, etc., under same regulations as those imposed on undertakers.

53. Every owner and occupier of any dwelling house or part of a dwelling house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes.

Owners or occupiers having laid pipes, and paid or tendered rates, entitled to demand a supply of water for domestic purposes.

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows:

54. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be so supplied, with a ball and stop cock in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball, and stop cock in good repair, so as effectually to prevent the water from running to waste; and in case any such person shall, when required by the undertakers, neglect to provide such cistern, ball, or stop cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop cock shall be provided or repaired, as the case may require. (*n*)

Protection of water.

Persons using water not required to be laid on at high pressure to provide cisterns, etc.

Penalty for neglect.

55. The undertakers may repair any such cistern, pipe, ball, or stop cock, so as to prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be received as damages.

Undertakers may repair cisterns, etc. and recover the expenses.

56. The surveyor, or any other person acting under the authority of the undertakers, may, between the hours of nine of the clock in the forenoon and

Power to surveyor employed by

(*m*) This is contained in ss. 28-34.

(*n*) See *Ward v. Folkestone*, 24 Q. B. D. 334.

Sect. 57. four of the clock in the afternoon, enter into any house or premises supplied with water by virtue of this or the special Act in order to examine if there be any waste or misuse of such water; and if such surveyor or other person at any such time be refused admittance into such dwelling house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises.

undertakers
to enter houses
to inspect, etc.

And with respect to the provision for guarding against fouling the water of the undertakers, be it enacted as follows:

Power to open
ground and
examine gas
pipes, to as-
certain
whether water
is being fouled
by gas, on
giving notice.

65. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground, and examine the pipes, conduits, and works of the persons making or supplying gas; provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay or any nonfeasance or misfeasance therein, as hereinbefore provided with respect to roads and pavements broken up by them for laying their pipes.

Ground, etc.,
to be re-
instated.

The expenses
to abide the
result of the
examination.

66. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas; but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination.

How expenses
shall be ascer-
tained and
recovered.

67. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered. (o)

Water rates.

And with respect to the payment and recovery of the water rates, be it enacted as follows:

68. [Rates to be recoverable from person supplied with water, and to be payable according to the annual value of the premises.]

69. [Where several houses are supplied by one pipe, each shall pay as if separately supplied.]

70. [Rates to be paid quarterly, in advance.]

71. [Parties giving notice to discontinue use of water or removing to pay to the next quarter-day.]

72. [Owners of houses not exceeding £10 rent to be liable to water rates.]

Rates how to
be recovered.

74. If any person supplied with water by the undertakers or liable as herein or in the special Act provided to pay the water-rate neglect to pay such water-rate at any of the said times of payment thereof the undertakers may stop the water from flowing into the premises in respect of which such rate is

payable, by cutting off the pipe to such premises (*p*) or by such means as the undertakers shall think fit and may recover the rate due from such person if less than £20 with the expenses of cutting off the water and costs of recovering the rate in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act (*q*); or if the rate so due amount to £20 or upwards the undertakers may recover the same with the expenses of cutting off the water by action in any court of competent jurisdiction.

Sect. 74.

26 & 27 Vict. c. 93 (The Waterworks Clauses Act, 1863)

Supply of Water

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows :

12. A supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages, where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose. Supply for other than domestic purposes.

13. Where the undertakers are authorized by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident. Want supply for other than domestic purposes, when excused.

14. Where the undertakers are authorized by the special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter (*r*) or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters, instruments, pipes, and apparatus shall not be subject to distress or to the landlord's hypothec for rent of the premises where the same are used, or be attached or taken in execution under any process of any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other legal proceeding, against or affecting the consumer of the water or the occupier of the premises, or other person in whose possession the meters, instruments, pipes, and apparatus may be. Power to let meters, etc., for hire.

15. The officers of the undertakers may enter any house, building, or lands, to, through, or into which water is supplied by them by measure, in order to inspect the meters, instruments, pipes, and apparatus for the measuring, conveyance, reception, or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house, building, or lands, for the purpose of removing any meter, instrument, pipe, or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds; but, except with the consent of a justice or the sheriff, this power Power of entry for ascertaining quantity consumed by meter, and for removing meters, etc.

(*p*) An incoming tenant is entitled to the supply without the arrears being paid: *Sheffield v. Wilkinson*, 4 C. P. D. 410.

(*q*) See s. 85.

(*r*) See *Sheffield v. Carter*, 8 Q. B. D. 632.

Sect. 15. of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon.

Protection of Water

And with respect to the waste or misuse of the water supplied by or belonging to the undertakers, be it enacted as follows :

Power to cut off water in certain cases.

16. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him, or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied.

The Public Health Act, 1875 (*continued*)

Power to supply water by measure.

58. A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent or otherwise for every meter provided by them ; they shall at all times at their own expense keep all meters and other instruments for measuring water let by them for hire to any person in proper order for correctly registering the supply of water, and in default of their so doing such person shall not be liable to pay rent for the same during such time as such default continues. The local authority shall for the purposes aforesaid have access to and be at liberty at all reasonable times to remove test inspect and replace any such meter or other instrument.

Local authority may require houses to be supplied with water in certain cases.

62. Where on the report of the surveyor of a local authority it appears to such authority that any house within their district is without a proper supply of water, and that such a supply of water can be furnished thereto at a cost not exceeding the water rate authorized by any local Act in force within the district, or where there is not any local Act so in force at a cost not exceeding twopence a week, or at such other cost as the Local Government Board may, on the application of the local authority, determine under all the circumstances of the case to be reasonable, the local authority shall give notice in writing to the owner, requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose. (s)

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district ; and water rates may be made and levied on the premises by the authority or company which furnishes the supply and may be recovered as if the owner or occupier of the premises had demanded a supply

(s) This power is not repealed by the Public Health (Water) Act, 1878: *Colne Valley v. Treharne*, 50 L. T. 617. See *W. Lancashire v. Ogilvy*, 1899, 1 Q. B. 377. By ss. 3, 11 of that Act any rural authority, or urban authority if authorized by the Local Government Board may on being satisfied that any occupied dwelling house in their district has not a sufficient water supply within a reasonable distance and that such supply can be provided at a reasonable cost serve notices on the

owner requiring him to furnish such supply and in default may enter on the premises and do the work themselves and recover the expense from the owner summarily or declare them to be private improvement expenses. By s. 4 the owner may appeal against the requirement either to the justices or to the Local Government Board, and by s. 5 in case of a joint supply he may appeal to the justices as to apportionment of expenses.

of water and were willing to pay water rates for the same; and any expenses incurred by the local authority in doing any such works may be recovered in a summary manner from the owner of the premises, or may by order of the local authority be declared to be private improvement expenses.

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64. All existing public cisterns pumps wells (t) reservoirs conduits aqueducts and works used for the gratuitous supply of water to the inhabitants of the district of any local authority shall vest in and be under the control of such authority, and such authority may cause the same to be maintained and plentifully supplied with pure and wholesome water, or may substitute maintain and plentifully supply with pure and wholesome water other such works equally convenient; they may also (subject to the provisions of this Act) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use.

Vesting of public cisterns, etc., in local authority.

65. Any local authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or wash-houses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied; moreover, any local authority may, if they think fit, construct any works for the gratuitous supply of any public baths or wash-houses established otherwise than for private profit or supported out of any poor or borough rates.

Water for public baths, or trading, or manufacturing purposes.

66. Every urban authority shall cause fire-plugs and all necessary works machinery and assistance for securing an efficient supply of water in case of fire (u) to be provided and maintained, (x) and for this purpose they may enter into any agreement with any water company or person; and they shall paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient.

Duty of urban authority to provide fire plugs.

70. [Power to close polluted wells, etc., by order of justices.]

REGULATION OF CELLAR DWELLINGS AND LODGING HOUSES

Occupation of Cellar Dwellings

71. [Prohibition of occupying cellar dwellings.]

72. [Existing cellar dwellings only to be let or occupied on certain conditions.]

74. Any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act.

Definition of occupying as a dwelling.

75. [Power to close cellars in case of two convictions, by order of justices.]

Common (y) Lodging-houses. (z)

77. [All common lodging-houses to be registered, and to be kept only by registered keepers.] (a)

(t) A parish council cannot sue to enforce a right to a well without the Attorney-General: *Stoke v. Price*, 1899, 2 Ch. 277.

(u) See *Atkinson v. Newcastle*, 2 Ex. D. 441.

(z) As to liability for non-repair see *Blackmore v. Mile End*, 9 Q. B. D. 451, and as to projections owing to non-repair

of roads, *Moore v. Lambeth*, 17 Q. B. D. 462; *Thompson v. Brighton*, 1894, 1 Q. B. 332.

(y) See 7 Ed. VII. c. 53, pt. v., *post*.

(z) By s. 89 this includes part of a house so used.

(a) Registration provided by s. 76. See 7 Ed. VII. c. 53, s. 74, *post*, p. 324.

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Power to local authority to require supply of water to houses.

81. Where it appears to any local authority that a common lodging-house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may by notice in writing require the owner or keeper of such house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose; and if the notice be not complied with accordingly, the local authority may remove such house from the register until it is complied with.

Limewashing of houses.

82. The keeper of a common lodging-house shall, to the satisfaction of the local authority, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall if he fails to do so be liable to a penalty not exceeding forty shillings.

Power to order reports from keepers of houses receiving vagrants.

83. The keeper of a common lodging-house in which beggars or vagrants are received to lodge shall from time to time, if required in writing by the local authority so to do, report to the local authority, or to such person as the local authority direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the person so ordered to report, which schedules he shall fill up with the information required and transmit to the local authority.

Keepers to give notice of fever, etc. therein.

84. The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease, give immediate notice thereof to the medical officer of health of the local authority, and also to the poor law relieving officer of the union or parish in which the common lodging-house is situated.

As to inspection.

85. The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer of the local authority, give him free access to such house or any part thereof; and any such keeper or person who refuses such access shall be liable to a penalty not exceeding five pounds. (b)

Nuisances (c)

Definition of nuisances.

91. For the purposes of this Act,—

1. Any premises in such a state as to be a nuisance or injurious to health :
2. Any pool ditch gutter watercourse privy urinal cesspool drain or ashpit so foul or in such a state as to be a nuisance or injurious to health :
3. Any animal so kept as to be a nuisance or injurious to health :
4. Any accumulation or deposit which is a nuisance or injurious to health : (d)
5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family :
6. Any factory, workshop, or workplace (e) not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases vapours dust or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein :

(b) See *Langdon v. Broadbent*, 37 L. T. 434; *Logsdon v. Booth*, 1900, 1 Q. B. 401; *Logsdon v. Trotter*, *ib.* 617, and also 53 & 54 Vict. c. 70, s. 70.

(c) See 7 Ed. VII. c. 53, s. 35, *post*.

(d) An accumulation may be a nuisance though not injurious to health: *Bishop Auckland v. Iron Co.*, 10 Q. B. D. 138.

(e) By 1 Ed. VII. c. 22, s. 2 (2), every

workshop and workplace within the meaning of the Public Health Act, 1875, must be kept free from effluvia arising from any drain, watercloset earthcloset privy urinal or other nuisance and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

Sect. 91.

7. Any fireplace or furnace which does not as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill factory dyehouse brewery bakehouse or gaswork, or in any manufacturing or trade process whatsoever; and
 8. Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance;
 9. A tent van shed or similar structure used for human habitation which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates whether or not members of the same family, (f)
- shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act: Provided—

First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health:

Secondly. That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

92. It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any Act in force within their district requiring fireplaces and furnaces to consume their own smoke.

94. On the receipt of any information respecting the existence of a nuisance the local authority shall, if satisfied of the existence of a nuisance, (g) serve a notice on the person by whose act default or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier (h) of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice (i) and to execute such works and do such things as may be necessary for that purpose: (k) Provided—

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:

(f) 48 & 49 Vict. c. 72, s. 9.

(g) They cannot thereby evade their obligations under s. 15: *Fordom v. Parsons*, 1894, 2 Q. B. 780.

(h) Where the occupier does the repairs he may be liable: *Todd v. Flight*, 9 C. B. N. S. 377; *Russell v. Shenton*, 3 Q. B. 439.

(i) It must specify the works required

if any: *R. v. Wheatley*, 16 Q. B. D. 34; *Millard v. Wastall*, 1898, 1 Q. B. 342.

(k) Where a person acting on such a notice does work which the authority were legally compellable to do the cost may be recovered as money paid under compulsion. See *North v. Walthamstow*, 67 L. J. Q. B. 972.

Duty of local authority to inspect district for detection of nuisances.

Local authority to serve notice requiring abatement of nuisance.

Sect. 94.

Secondly. That where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act default or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further order.

On non-compliance with notice complaint to be made to justice.

95. If the person on whom a notice to abate a nuisance has been served makes default (l) in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.

96. [Power of court of summary jurisdiction to make order dealing with nuisance.] (m)

97. [Order of prohibition in case of house unfit for human habitation.]

98. [Penalty for contravention of order of court: local authority may enter thereunder and execute works.]

Appeal against order.

99. Where any person appeals against an order to the court of quarter sessions in manner provided by this Act (n) no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted.

Power to sell manure, etc.

101. Any matter or thing removed by the local authority in abating any nuisance under this Act may be sold by public auction; and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Power of entry of local authority.

102. The local authority, or any of their officers (o) shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke, (p) at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on. (q)

Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the local authority or any of their officers shall be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be. (r)

(l) It is no answer that the owner cannot enter on the premises: *Parker v. Inge*, 17 Q. B. D. 584. Cf. *Scarborough v. Scarborough*, 1 Ex. D. 144.

(m) Must be signed by two justices: *Wing v. Epsom*, 1904, 1 K. B. 798.

(n) See s. 269.

(o) By 8 Ed. VII. c. 67 (the Children Act, 1908), s. 2, any inspector or other person duly appointed and authorized in writing by or on behalf of the local authority shall from time to time inspect any infants referred to in any notice given under this Act (i.e. as to infants being retained or received for hire for the purpose of maintenance), and the premises in

which they are retained or received in order to satisfy himself as to the proper maintenance of such infants or to give any necessary advice or directions as to such maintenance. See also s. 5.

(p) See 10 & 11 Vict. c. 34, s. 108.

(q) This does not authorize entry without permission of the occupier: *Cousett v. Crawford*, 1903, 2 K. B. 183.

(r) By 49 & 50 Vict. c. 32 (the Contagious Diseases Animals Act, 1886), s. 9, the local authority and their officers for the purpose of enforcing the orders and regulations of the Local Government Board made under this section shall have the same right to be admitted to any premises

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same. (s)

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath by any officer of the local authority (made after reasonable notice in writing of the intention to make the same has been given to the person having custody of the premises) may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, on oath made before him of that fact, by order under his hand authorize the local authority or any of their officers to enter such premises during the hours aforesaid. (t)

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done. (u)

as under s. 102 of the Public Health Act, 1875, provided that nothing in this section shall authorize any person except with the permission of the local authority under the principal Act (see 57 & 58 Vict. c. 57) to enter any cowshed or other place in which an animal affected with any disease is kept, and which is situated in a place declared to be infected with such disease.

(s) *Tinker v. Wadsworth*, 27 L. J. Ch. 342.

(t) By 1 Ed. VII. c. 22, s. 14, it is the duty of the district council to examine factories where more than forty persons are employed as to the provision of means of escape in case of fire. See *Brass v. L. C. C.*, 1904, 2 K. B. 336. By s. 102 as to every retail bakehouse the medical officer of health of the district council shall have and may exercise all the powers of entry inspection taking legal proceedings and otherwise of an inspector. See *post*, p. 425. A retail bakehouse means any bakehouse or place not being a factory the bread biscuits or confectionery baked in which are sold not wholesale but by retail in some shop or place occupied with the bakehouse. As to dyers see 23 Geo. III. c. 15.

(u) By 41 & 42 Vict. c. 25, s. 7, any rural sanitary authority or any of their officers or any person duly authorized in writing for that purpose by the authority if they or he have or has reasonable ground for believing that any occupied dwelling-house within the district is without a proper supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of such house shall be admitted into the premises for which such supply is required or from which the water supply may be derived for the purpose of ascertaining whether or not such house has such a supply within

a reasonable distance; and for the purposes of any such admission ss. 102 and 103 of the Public Health Act, 1875, shall apply in the same manner as if such admission were necessary for the purpose of examining as to the existence of any nuisance on the premises and the person so authorized as aforesaid were an officer of the rural sanitary authority. As to urban authorities see s. 11.

By 48 & 49 Vict. c. 72, s. 9 (3), where any person duly authorized by a sanitary authority or by a justice of the peace has reasonable cause to suppose either that there is any contravention of the provisions of this Act or any bye-law made under this Act in any tent van shed or similar structure used for human habitation or that there is in any such tent etc. any person suffering from a dangerous infectious disorder he may on producing (if demanded) either a copy of his authorization purporting to be certified by the clerk or a member of the sanitary authority or some other sufficient evidence of his being authorized as aforesaid enter by day such tent etc. and examine the same and every part thereof in order to ascertain whether in such tent etc. there is any such contravention of any such bye-law or a person suffering from a dangerous infectious disease. (4) Day = between 6 a.m. and 9 p.m. (6) The section is to apply to the metropolis. (7) But not to apply to any tent etc. erected or used by any portion of Her Majesty's military or naval forces.

By 40 & 41 Vict. c. 60, s. 5, n like power is conferred as to canal-boats with the addition of the words "and may if used be detain the boat for the purpose but for no longer time than is necessary."

By 52 & 53 Vict. c. 21, s. 29, any inspector of weights and measures or officer appointed for the purpose by the

Sect. 106.

Power of officer of police to proceed in certain cases against nuisances.

106. Where it is proved to the satisfaction of the Local Government Board that a local authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorize any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner or in any county or superior court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority:

But such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice, for the purpose of carrying into effect this enactment.

Power to proceed where cause of nuisance arises without district.

108. Where a nuisance under this Act within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district, the local authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorized, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

109. [Provision in case of two convictions for overcrowding for closing premises by order of justices.]

Provision as to ships.

110. For the purpose of the provisions of this Act relating to nuisances, any ship or vessel lying in any river harbour or other water within the district of a local authority shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river harbour or other water not within the district of a local authority shall be deemed to be within the district of such local authority as may be prescribed by the Local Government Board, and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying.

The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel under the command or charge of any officer bearing Her Majesty's commission, or to any ship or vessel belonging to any foreign government. (x)

local authority may not all reasonable times enter any building or part of a building or other place in which coal is sold or kept or exposed for sale and may stop any vehicle carrying coal for sale or for delivery to a purchaser and may test any weights and weighing instruments found in any such place or vehicle and may weigh any load sack or other less quantity of coal found in any such place or vehicle or which is in course of delivery to any purchaser. By s. 27 the same officer may require that any coal or any vehicle used for the carriage of coal in bulk be weighed or re-weighed by any weighing instrument stamped by an in-

spector of weights and measures. Provided (a.) no seller of coal or person in charge of a vehicle in which coal is carried shall be required under this section to carry coal beyond such distance not exceeding half a mile as may be prescribed in that behalf by the local authority. See *Roberts v. Woodward*, 25 Q. B. D. 412; *Franklin v. Godfrey*, 43 W. R. 46. And as to constables performing such duty, *R. v. Kesteven*, 58 L. J. M. C. 157.

(x) This section is to have effect for the purpose of the provisions relating to infectious diseases and hospitals contained in ss. 120, 121, and 124, *inf.* 48 & 49 Vict. c. 35, s. 2.

*Offensive Trades.*Sect. 114.

114. [Duty of urban authority to complain to justice of nuisance arising from offensive trade.]

Unsound Meat, etc.

116. (y) Any medical officer of health (z) or inspector of nuisances (a) may at all reasonable times (b) inspect and examine any animal (c) carcase meat poultry game flesh fish (d) fruit vegetables corn bread flour or milk exposed for sale, or deposited in any place (e) for the purpose of sale, or of preparation for sale, (f) and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk appears to such

Power of
medical officer
of health to
inspect meat,
etc.

(y) See 53 & 54 Vict. c. 59, s. 28, *post*, p. 311.

(z) He may exercise any of the powers of an inspector of nuisances: s. 191.

(a) By 52 & 53 Vict. c. 11, s. 3, these officers and any other officer of a local authority acting on the instructions of such authority or appointed by such authority for the purposes of this Act may at all reasonable times inspect and examine any meat which he has reason to believe to be horseflesh exposed for sale or deposited for the purpose of sale or of preparation for sale and intended for human food, other than a shop stall or place bearing words indicating that horseflesh is sold there, and if such meat appears to him to be horseflesh he may seize and carry away or cause to be seized and carried away the same in order to have the same dealt with by a justice.

(b) This was held not to extend to Sunday afternoon where a man lived half a mile from his shop: *Small v. Bickley*, 32 L. T. 726.

(c) Includes live animals: *Moody v. Leach*, 44 J. P. 459.

(d) By 40 & 41 Vict. c. 42 (the Fisheries, Oyster Crab and Lobster Act, 1877), s. 12, all oysters crabs and lobsters of which the possession exposure for sale consignment for sale or purchase for sale is prohibited by this Act may be searched for seized condemned destroyed and disposed of by any authority lawfully acting under any Act charter or byelaw or by any persons appointed by that authority or in Ireland by the inspectors of Irish fisheries with the approval of the lord-lieutenant in like manner as if such oysters crabs and lobsters respectively were found to be diseased unsound unwholesome corrupt unfit to be sold or unfit for the food of man. By s. 4 a person shall not sell expose for sale consign for sale or buy for sale (1) deep-sea oysters between 15 June and 4 August; (2) any other oysters between 14 May and 4 August. Provided that

there shall be no offence if they (1) were taken within the waters of some foreign state: *Robertson v. Johnston*, 1893, 1 Q. B. 129; (2) were preserved in tins or otherwise cured; or (3) were intended for the purpose of oyster cultivation within the same district in which they were taken, or were taken from any place for cultivation with the sanction of the Board of Trade. By s. 3 this part of the Act does not apply to Ireland. By s. 5 the Board of Trade may temporarily prohibit or restrict dredging for oysters. By s. 8 a person shall not take have in his possession sell expose for sale consign for sale or buy for sale (1) any edible crab which measures less than 4½ in. across the broadest part of the back; or (2) any edible crab carrying any spawn attached to the tail or other exterior part of the crab whether known as "berried crab" "seed crab" "spawn crab" or "racc crab" or by any other name; or (3) any edible crab which has recently cast its shell whether known as "caster" "white crab" "white-footed crab" "white-livered crab" "soft crab" "glass crab" or by any other name. Provided that there shall be no offence if they were intended for bait for fishing. (This proviso not to apply within any area fixed by order of the Board of Trade: 47 & 48 Vict. c. 26, s. 1.) By s. 9 a person shall not take have in his possession etc. any lobster which measures less than 8 in. from the tip of the beak to the end of the tail when spread as far as possible flat. All such lobsters to be forfeited. By s. 10 the Board may prohibit the taking of crabs and lobsters within certain areas.

(e) This applies to a yard belonging to a shop: *Young v. Gratridge*, L. R. 4 Q. B. 166; and to meat passing from a slaughterhouse to a factory of preserved meats: *Duly v. Webb*, L. R. 4 C. L. 309; and see *Mallinson v. Carr*, 1891, 1 Q. B. 48.

(f) But not after sale, *Vinter v. Hind*, 10 Q. B. D. 63.

Sect. 116. medical officer or inspector to be diseased or unsound or unwholesome or unfit for the food of man, he may seize (*g*) and carry away the same himself or by an assistant, in order to have the same dealt with by a justice. (*h*)

117. [Power of justice to order destruction of unsound meat, etc.]

INFECTIOUS DISEASES AND HOSPITALS

Provisions against Infection

Duty of local authority to cause premises to be cleansed and disinfected.

120. Where any local authority are of opinion, on the certificate of their medical officer of health or of any other legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice in writing to the owner or occupier of such house or part thereof requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice.

If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings for every day during which he continues to make default; and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner.

Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, with his consent cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof. (*i*)

Destruction of infected bedding, etc.

121. Any local authority may direct the destruction of any bedding clothing or other articles which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same.

Provision of means of disinfection.

122. Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding clothing or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.

Provision of conveyance for infected persons.

123. Any local authority may provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

124. [Removal of infected persons without proper lodging to hospital by order of justices]; and any person so suffering, (*k*) who is lodged in any common lodging-house, may, with the consent of the superintendent on a certificate of a qualified medical practitioner be so removed by order of the local authority. (*l*)

(*g*) No notice is necessary: *White v. Redfern*, 5 Q. B. D. 15.

(*h*) By 10 & 11 Vict. c. 14, s. 15, any inspector of provisions appointed by the undertakers of a market or fair may seize unwholesome meat or provisions sold or exposed for sale there and carry the same before a justice.

(*i*) See 53 & 54 Vict. c. 34, s. 5, *post*, p. 307. These powers are applied to canal boats by 40 & 41 Vict. c. 60, s. 4, and

extend to detaining the boat if need be; but such boat shall not be detained a longer time than is necessary for cleansing and disinfecting the same.

(*k*) See 7 Ed. VII. c. 53, s. 65.

(*l*) By the Children Act, 1908, 8 Ed. VII. c. 67, pt. i., s. 5 (1) If any infant in respect of which notice is required to be given under this part of this Act (see s. 1) be kept (*a.*) in any premises which are overcrowded dangerous or insanitary; or

*Hospitals***Sect. 131.**

131. [Power of local authority to provide hospitals.]

132. Any expenses incurred by a local authority (*m*) in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place. (*n*)

Recovery of costs of maintenance of patient in hospital.

Prevention of Epidemic Diseases (o)

137. The local authority and their officers shall have power of entry on any premises or vessel for the purpose of executing or superintending the execution of any regulations issued by the Local Government Board. (*p*)

138. Whenever, in compliance with any regulation so issued by the Local Government Board as aforesaid, any poor law medical officer performs any medical service on board any vessel he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the union or place for which he is appointed; and such charges shall be payable by the captain of such vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick.

Poor law medical officer entitled to costs of attendance on board vessels.

Where such services are rendered by any medical practitioner who is not a poor law medical officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid. In case of dispute in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined by a court of summary jurisdiction; and such court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

Mortuaries

142. [Justice may in certain cases order removal of dead body to mortuary.]

(*b*.) by any person who by reason of negligence ignorance inebriety immorality criminal conduct or other similar cause is unfit to have care of it; or (*c*.) by any person or in any premises in contravention of any of the provisions of this part of this Act (see s. 3). Any visitor or other person appointed or authorized to execute the provisions of this part of this Act may apply either to a justice or to the local authority for an order directing him to remove the infant to a place of safety until it can be restored to its relatives or be otherwise lawfully disposed of. (2) Any person refusing to comply with such an order upon its being produced and read over to him or obstructing or causing or procuring to be obstructed the visitor or such other person in the execution thereof

shall be guilty of an offence under this part of this Act; and (*a*.) if the order was made by a justice the order may be enforced by the visitor or by any constable; and (*b*.) if the order was made by the local authority the visitor or other person may apply to any justice for an order directing the removal of the infant which order may be enforced by the visitor or by any constable. As to cleansing of verminous children see s. 122.

(*m*) There is no absolute obligation that no patient should be discharged by the visiting physician while still in a condition which might cause infection: *Evans v. Liverpool*, 1906, 1 K. B. 160.

(*n*) See 7 Ed. VII. c. 53, s. 60.

(*o*) See 7 Ed. VII. c. 53, pt. iv., *post*.

(*p*) See s. 134.

Sect. 144.

PART IV

LOCAL GOVERNMENT PROVISIONS

HIGHWAYS AND STREETS

As to Highways (q)

Power of surveyor of highways and of vestries under 5 & 6 W. IV. c. 50, vested in urban authority.

144. Every urban (*r*) authority shall within their district exclusively of any other person execute the office of and be surveyor of highways, and have exercise and be subject to all the powers authorities duties and liabilities (*s*) of surveyors of highways under the law for the time being in force, save so far as such powers authorities or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have exercise and be subject to all the powers authorities duties and liabilities which by the Highway Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district.

All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint.

Regulation of Streets and Buildings (t)

Vesting of streets, etc., in urban authority.

149. All streets, (*u*) being or which at any time become highways repairable by the inhabitants at large (*x*) within any urban district, and the pavements stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority. (*y*)

(*q*) *Tramways*.—Where the local authority own the tramways then by 33 & 34 Vict. c. 78, s. 52, it shall be lawful for any officer or servant of the [promoters or lessees of any] tramway and all persons called by him to his assistance to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned and whose name or residence is unknown to such officer or servant until such person can be conveniently taken before a justice or until he be otherwise discharged by due course of law. By s. 51 if any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage. An action for malicious prosecution lies for proceedings groundlessly taken under this section: *Rayson v. South London Tramways Co.*, 1893, 2 Q. B. 304.

(*r*) Extended to rural authorities by 56 & 57 Vict. c. 73, s. 25.

(*s*) As to the liability for misfeasance, see *Foreman v. Canterbury*, L. R. 6 Q. B. 214, and cf. *R. v. Wakefield*, 20 Q. B. D. 810. There is no liability for mere non-feasance: *Picton v. Geldert*, 1893, A. C. 531. As to compensation, see *Brierley Hill v. Pearsall*, 9 A. C. 595. As to liability for damage caused to pipes by steam-rollers, see *Gas Light Co. v. St. Mary Abbott's*, 15 Q. B. D. 1, and traction-engines, *Chichester v. Foster*, 1906, 1 K. B. 167.

(*t*) See 7 Ed. VII. c. 53, pt. ii., *post*.

(*u*) *I.e.* so much above and below the surface as is necessary for the user of the street: *Finchley Electric Light Co. v. District Council*, 1903, 1 Ch. 437.

(*x*) As to the power to remove obstructions see 51 & 52 Vict. c. 41, s. 11; 56 & 57 Vict. c. 73, s. 26, and *Reynolds v. Presteign*, 1896, 1 Q. B. 604. And as to the power to recover the expenses of such removal: *Louth v. West*, 65 L. J. Q. B. 535.

(*y*) Unless authorized by a special Act or provisional order: *Montreal v. Standard Co.*, 1897, A. C. 527, no person can break up the highway so as to cause a nuisance: *R. v. Longton Co.*, 29 L. J. M. C. 118, except by agreement with the local authority: *Edgeware v. Harrow*, L. R. 10 Q. B. 92. An injunction will however not be granted in a trivial case: *Att.-Gen. v. Cambridge*, L. R. 4 Ch. 71.

The urban authority shall from time to time cause all such streets to be levelled paved metalled flagged channelled altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised lowered or altered (z) as they may think fit, and may place and keep in repair fences and posts (a) for the safety of foot passengers.

Any person who without the consent of the urban authority wilfully displaces or takes up or who injures the pavement stones materials fences or posts of or the trees in any such street shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced taken up or injured; he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award. (b)

150. (c) Where any street (d) within any urban district (not being a highway repairable by the inhabitants at large) (e) or the carriageway footway or any other part of such street is not sewered levelled paved (f) metalled flagged channelled and made good or is not lighted to the satisfaction of the urban authority, (g) such authority may, by notice (h) addressed to the respective owners or occupiers of the premises fronting adjoining or abutting (i) on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good (k) or to provide proper means for lighting the same within a time to be specified in such notice. (l)

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Power to compel paving, etc., of private streets.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

(z) As to compensation see *Nutter v. Accrington*, 4 Q. B. D. 375.

(a) This is not an absolute duty: *Wilson v. Halifax*, L. R. 3 Ex. 114.

(b) As to minerals see 41 & 42 Vict. c. 77, ss. 27, 38.

(c) Where the Private Street Works Act, 1892 (55 & 56 Vict. c. 57), is adopted, ss. 150 to 152 do not apply. The powers which are contained in ss. 6, 9, 10, and 12, are practically identical with those in the Public Health Act. Work executed on one side is recoverable from frontagers on both sides: *Clacton v. Young*, 1895, 1 Q. B. 395. A thoroughfare used by foot-passengers only is not a street within the Act: *Rishton v. Haslingden*, 1898, 1 Q. B. 294. Objections by owners to the proposed works are to be heard by a justice: s. 8. See *Horne Bay v. Payne*, 1907, 2 K. B. 130.

(d) The definition in s. 4, ante, applies: *Fenwick v. Croydon*, 1891, 2 Q. B. 216.

(e) See *Willes v. Wallington*, 32 L. J. C. P. 86.

(f) See 53 & 54 Vict. c. 59, s. 11, post, p. 309.

(g) It may have been previously approved by the authority: *Barry v. Parry*, 1895, 2 Q. B. 110. This is a question of fact for the justices: *Bloor v. Beckenham*, 1908, 2 K. B. 671.

(h) It must refer to the deposited plans and sections and state that they are open to inspection: *Stourbridge v. Butler*, 1909, 1 Ch. 87.

(i) See *Lightbound v. Higher Bebington*, 16 Q. B. D. 577.

(k) Does not extend to raising the street to the level of an adjoining one: *Curey v. Hull*, 34 L. J. M. C. 7.

(l) See *Walthamstow v. Staines*, 1891, 2 Ch. 612; *Hornsey v. Davis*, 1893, 1 Q. B. 756; *R. v. Goole*, 39 W. R. 608; *Wilkinson v. Llanduff*, 1903, 2 Ch. 695.

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If such notice is not complied with, the urban authority may, if they think fit, execute the works (*m*) mentioned or referred to therein; and may recover in a summary manner (*n*) the expenses incurred by them in so doing (*o*) from the owners (*p*) in default, according to the frontage of their respective premises, (*g*) and in such proportion as is settled by the surveyor (*r*) of the urban authority, (*s*) or (in case of dispute) by arbitration in manner provided by this Act; (*t*) or the urban authority may by order declare the expenses so incurred to be private improvement expenses. (*u*)

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large. (*x*)

Exemption from expenses under last section of incumbent of church, etc.

151. The incumbent or minister of any church chapel or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor, shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church chapel or place or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church chapel or other place, or on such churchyard or burial ground, or to subject the same to distress execution or other legal process; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted. (*y*)

Power to require gas and water pipes to be moved.

153. Where for any purpose of this Act any urban authority deem it necessary to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks or gasworks laid in or under any street, they may by notice in writing require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or

(*m*) They cannot alter the respective widths of the carriage-way and footway: *Robertson v. Bristol*, 1900, 2 Q. B. 198.

(*n*) The six months' limitation within which the matter must be determined by the justice does not begin to run until after the three months allowed by s. 257 for disputing the apportionment, *Jacomb v. Dodgson*, 32 L. J. M. C. 113; but a charge on the premises may be enforced any time within twelve years: *Hornsey v. Monarch Society*, 24 Q. B. D. 1. The apportionment may be disputed where made with respect to more than one street: *Shanklin v. Millar*, 5 C. P. D. 272. As to what is sufficient notice of dispute, see *Folkestone v. Brooks*, 1893, 2 Ch. 22. It must be between a particular owner or owners and the authority: *Tunbridge v. Ackroyd*, 5 Ex. D. 199.

(*o*) There may be a variation: *Acton v. Lewsey*, 11 A. C. 93. It may still be shown that it is repairable by the inhabitants: *Heslath v. Atherton*, L. R. 9 Q. B. 4.

(*p*) When the works are completed: *Millard v. Balby*, 1905, 1 K. B. 60; *East Ham v. Aylett*, 1905, 2 K. B. 22. As to agreement with the authority to do the work, see *Lewis v. Curdiss*, 47 L. J. M. C.

101. See also *Wake v. Sheffield*, 12 Q. B. D. 142; *Bournemouth v. Watts*, 14 ib. 87.

(*g*) The cost of the footway on one side may be recovered from the frontagers of that side: *Wakefield v. Mander*, 5 C. P. D. 248. The frontage must be within the district of the authority: *Hornsey v. Birkbeck*, 1906, 1 K. B. 521.

(*r*) The apportionment must not be in sections: *Whitchurch v. Fulham*, L. R. 1 Q. B. 233.

(*s*) The remedy in case of overcharge is appeal to the Local Government Board: *Cook v. Ipswich*, L. R. 6 Q. B. 451.

(*t*) See ss. 179-181.

(*u*) The authority must elect between these courses: *Wilson v. Bolton*, L. R. 7 Q. B. 105; *Gould v. Bacup*, 50 L. J. M. C. 44.

(*x*) See *Evans v. Newport*, 24 Q. B. D. 264; *Chorley v. Nightingale*, 1906, 2 K. B. 612. As to private streets see *Handsworth v. Derrington*, 1897, 2 Ch. 438.

(*y*) This exemption does not apply to trustees of a chapel and buildings not wholly devoted to religious purposes: *Brewis v. Hornsey*, 64 L. T. 288. See *Re Bettsworth*, 37 Ch. D. 535; *Bowditch v. Wakefield*, L. R. 6 Q. B. 567; *Tottenham v. Rowell*, 15 Ch. D. 378.

connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required: Sect. 153.

Provided—

That no such alteration shall be required or made which will permanently injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual; and

That where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respect as if this Act had not been passed.

155. When any house or building situated in any street in an urban district, or the front thereof, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith. (z) Power to regulate line of buildings.

The urban authority shall pay or tender compensation to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act. (a)

158. Where a notice plan or description of any work is required by any byelaw made by an urban authority to be laid before that authority, the urban authority shall, within one month after the same has been delivered or sent to their surveyor or clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any byelaw of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed. (b) As to commencement of works and removal of works made contrary to byelaws.

Where an urban authority incur expenses in or about the removal of any work executed contrary to any byelaw, such authority may recover in a summary manner the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion.

Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any byelaw, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any byelaw to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the byelaw shall be deemed to be a continuing offence, but a penalty shall not be incurred

(z) Not to apply to buildings belonging to a railway: s. 157.

(a) By 51 & 52 Vict. c. 52, s. 3, buildings are not to be brought forward beyond the front main wall of the house or building on either side. Where they are so, a mandatory injunction may be granted notwithstanding the penalty imposed by the section: *Att.-Gen. v. Wimbledon Co.*, 1904, 2 Ch. 34. See *Att.-Gen. v. Edwards*,

1891, 1 Ch. 194; *Att.-Gen. v. Hatch*, 1893, 3 Ch. 36.

(b) This power cannot be exercised without giving the owner an opportunity of showing cause against it: *Hopkins v. Smethwick*, 24 Q. B. D. 712. See *Baker v. Portsmouth*, 3 Ex. D. 10; *Thompson v. Faulsworth*, 46 J. P. 21; *Slee v. Bradford*, 8 L. T. 431; *Jaggard v. Doncaster*, 54 J. P. 438.

Sect. 158. in respect thereof after the expiration of one year from the day when the offence was committed or the byelaw was broken. (c)

What to be deemed a new building.

159. For the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework is left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building. (d)

Incorporation of certain provisions of 10 & 11 Vict. c. 34.

160. The provisions of the Towns Improvement Clauses Act, 1847, with respect to the following matters, that is to say,

- (1) With respect to naming the streets and numbering the houses; and
- (2) With respect to improving the line of the streets and removing obstructions; and
- (3) With respect to ruinous or dangerous buildings; (e) and
- (4) With respect to precautions during the construction and repair of the sewers streets and houses,

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act. (f)

Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may, at the option of the urban authority, be served on owners instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act. (g)

10 & 11 Vict. c. 34 (The Towns Improvement Clauses Act, 1847)

Naming streets.

And with respect to naming the streets and numbering the houses, be it enacted as follows:

Houses to be numbered and streets named.

64. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place, at or near each end, corner, or entrance of every such street, the name by which such street is to be known; (h) and every person who destroys, pulls down, or defaces any such number or name, or puts up

Penalty for defacing numbers or names, or putting up others.

(c) See also 10 & 11 Vict. c. 34, ss. 75, 77; 51 & 52 Vict. c. 52, s. 3.

(d) A re-erection is included: *Hobbs v. Dance*, L. R. 9 C. P. 30, but not an addition: *Shiel v. Sunderland*, 30 L. J. M. C. 215. See 7 Ed. VII. c. 53, s. 23, *post*.

(e) By 53 & 54 Vict. c. 70 (Housing of the Working Classes Act, 1890), s. 34, where an order for the demolition of a building unfit for habitation has been made the owner thereof shall within three months after service of the order proceed to take down and remove the building and if the owner fails therein the local authority shall proceed to take down and remove

the building and shall sell the materials and after deducting the expenses incident to such taking down and removal pay over the balance of money (if any) to the owner. See also 3 Ed. VII. c. 39, s. 8.

(f) See *infra*.

(g) With regard to the supply of gas by local authorities, see ss. 161 and 162, and as to electric light, see 45 & 46 Vict. c. 56, ss. 12, 18, 21, and 24 and 62 & 63 Vict. c. 19. These last-mentioned Acts apply to S. & I.

(h) See *Anderson v. Dublin*, 15 L. R. Ir. 510; *Collins v. Hornsey*, 1901, 2 K. B. 180.

any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding forty shillings for every such offence.

Sect. 64.

65. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced; and every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding forty shillings, and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall be repaid to them by such occupier, and shall be recoverable as damages.

Numbers of houses to be renewed by occupiers. Penalty for neglect.

And with respect to improving the line of the streets, and removing obstructions, be it enacted as follows:

Improving streets.

66. The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated.

Houses may be set forward for improving line of streets.

67. The commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening, enlarging, or otherwise improving any of the streets, and they shall resell any parts of the land so purchased which shall not be wanted for the enlargement of the street.

Commissioners may purchase lands for widening streets, etc., and sell the parts not wanted.

68. When any house or building, any part of which projects beyond the regular line of the street, or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or toward the line of the street, or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the improvement of such street: Provided always, that the commissioners shall make full compensation to the owner of any such house or building for any damage he thereby sustains. (i)

Houses projecting beyond line of street, when taken down, to be set back.

Compensation to be made.

69. The commissioners may give notice to the occupier of any house or building to remove or alter any porch, shed, projecting window, (j) step, cellar, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate, or fence. (k) or any other obstruction or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street; and such occupier shall, (l) within fourteen days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the commissioners, and in default thereof shall be liable to a penalty not exceeding forty shillings; and the commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default, and shall be recoverable as damages: Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building.

Future projections of houses, etc., to be removed on notice.

Penalty for neglect.

Occupier removing obstruction not put up by him may deduct expense from rent.

(i) See *Auckland v. Westminster*, L. R. 7 Ch. 597.

(j) *R. v. Ingham*, 17 Q. B. 884.

(k) *Bouverie v. Miles*, 1 B. & Ad. 38.

(l) If he object he should apply to the local authority to be heard: *Att.-Gen. v. Hooper*, 1893, 3 Ch. 483; and see *Bayshaw v. Buxton*, 1 Ch. D. 220.

Sect. 70.

Commissioners may cause existing projections to be removed, on giving notice and making compensation.

Doors, etc., in future not to be made to open outwards, except when so allowed in case of public buildings.

Existing doors, etc., opening outwards may be altered.

Ruinous or dangerous buildings.

Ruinous or dangerous buildings to be taken down or secured by owners, etc.

On neglect of owner, etc., justices, on complaint of surveyor, may make an order for buildings to be taken down, etc.

And on default of owner, etc., commissioners may take down, etc., buildings,

70. If any such obstructions or projections were erected or placed against or in front of any house or building in any such street before the passing of the special Act, the commissioners may cause the same to be removed or altered as they think fit; provided that they give notice of such intended removal or alteration to the occupier of the house or building against or in front of which such obstruction or projection shall be thirty days before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

71. All doors, gates, and bars put up after the passing of the special Act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such doors, gates, or bars to be otherwise hung or placed; and if, except as aforesaid, any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier of such house, building, yard, or land shall, within eight days after notice from the commissioners to that effect, cause the same to be altered so as not to open outwards; and in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier, and shall be recoverable from him as damages, and he shall, in addition, be liable to a penalty not exceeding forty shillings.

72. If any such door, gate, or bar was before the passing of the special Act hung so as to open outwards upon any street, the commissioners may alter the same, so that no part thereof when open shall project over any public way.

73. [Coverings for cellar doors to be made by occupiers.]

74. [Waterspouts to be affixed to houses or buildings, to prevent water from falling into street or footpath.]

And with respect to ruinous or dangerous buildings, be it enacted as follows:

75. If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers or to the occupiers of the neighbouring buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require; and if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices, and it shall be lawful for such justices to order the owner, or in his default the occupier (if any), of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same, or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by such justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building, wall, or other thing as

shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured, in such manner as shall be requisite; and all the expenses of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof. (m) **Sect. 75.** and recover expenses from owner, etc.

76. [If owner is within limits of Act and refuses to pay expenses, they may be levied by distress.]

77. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot be made, the commissioners, after giving twenty-eight days notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building or on the land whereon such building stood, may take such building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845, in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act. If owner cannot be found within the limits, or distress cannot be made, commissioners may take the house or ground, making compensation as provided by 8 & 9 Vict. c. 18, but deducting their expenses, and may sell the houses, etc.

78. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building; and the commissioners shall restore any overplus arising from such sale to the owner of such house or building, on demand; nevertheless, the commissioners, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are herein-before given to them for compelling the payment of the whole of said expenses. Commissioners may sell the materials for payment of expenses, restoring to the owner the overplus arising from the sale.

And with respect to precautions during the construction and repair of the sewers, streets, and houses, be it enacted as follows: **Precautions during repairs.**

79. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoring-up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper; and the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents; and every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners, shall for every such offence be liable to a penalty not exceeding five pounds. Houses to be protected, and bars to be erected across streets, during repairs or alterations, and lights to be placed at night. Penalty for removing bars, etc.

80. [Hoards to be set up during repairs; with footways for passengers; and to be lighted at night.](n)

81. [When building materials, etc. are deposited or excavations made in streets, the same shall be lighted at night, and fenced, until removed or filled up.]

(m) See *Crisp v. London C.C.*, 1899, 1 Q. B. 720. p. 311, and *Bradbee v. Christ's Hospital*, 4 M. & G. 714.

(n) See 53 & 54 Vict. c. 59, s. 34, *post*,

Sect. 83.

Commissioners shall cause dangerous places to be repaired or inclosed.

Expenses shall be recoverable from owners of premises.

83. If any building or hole (o) or any other place near any street be, for want of sufficient repair, protection, or inclosure, dangerous to the passengers along such street, the commissioners shall cause the same to be repaired, protected, or inclosed, so as to prevent danger therefrom; and the expenses of such repair, protection, or inclosure shall be repaid to the commissioners by the owner of the premises so repaired, protected, or inclosed, and shall be recoverable from him as damages.

Public Health Act, 1875 (*continued*)*Markets and Slaughter-houses (p)*

166. [Urban authority may provide markets.]

But no market shall be established in pursuance of this section so as to interfere with any rights powers or privileges enjoyed within the district by any person without his consent.

Incorporation of provisions of 10 & 11 Vict. c. 14, as to markets.

167. For the purpose of enabling any urban (g) authority to establish or to regulate markets, there shall be incorporated with this Act the provisions of the Markets and Fairs Clauses Act, 1847, in so far as the same relate to markets; that is to say, . . .

With respect to the stallages rents and tolls : (r)

Provided that all tolls leviable by an urban authority in pursuance of this section shall be approved by the Local Government Board.

Police Regulations

Incorporation of certain provisions of 10 & 11 Vict. c. 89.

171. The provisions of the Towns Police Clauses Act, 1847, (s) with respect to the following matters, (namely,)

(o) Does not apply to a goat running by a public footpath: *Wilson v. Halifax*, L. R. 3 Ex. 114.

(p) By 10 & 11 Vict. c. 14 (the Markets and Fairs Clauses Act, 1847), s. 20, the inspector of provisions of any market or fair or any officer appointed by the undertakers for that purpose may at all times of the day with or without assistants enter into and inspect all buildings erected or set apart by the undertakers for slaughtering cattle and examine whether any cattle or the carcase of any cattle is deposited there; and in case such officer shall find any cattle or the carcase or part of the carcase of any such cattle which shall appear unfit for the food of man he may seize and carry the same before a justice. By 10 & 11 Vict. c. 34, s. 131, incorporated with this Act by s. 169, a like power is conferred on the inspector of nuisances, the officer of health or any other officer appointed by the commissioners, i.e. the persons appointed to carry out the special Act, i.e. any Act passed thereafter for the improvement of towns, for that purpose. As to knackers' yards, see 26 Geo. III. c. 71, s. 7. As to salmon trout and char, see 55 & 56 Vict. c. 50, s. 3, *post*, p. 437.

(q) As to rural authorities, see 8 Ed. VII. c. 6.

(r) By section 38 of that Act if any

person liable to the payment of any stallage rent or toll authorized by this or the special Act, i.e. any Act thereafter passed authorizing the construction or regulation of a market or fair and with which this Act shall be incorporated, to be taken do not pay the same when demanded the undertakers or their lessee or any person authorized by the undertakers or their lessee to collect the same may levy the same in England or Ireland by distress and in Scotland by poinding and sale of all or any of the cattle or other articles in the market belonging to the person liable to pay such stallage rent or toll or under his charge, or such tolls may be recovered in any court having competent jurisdiction. See *Torquay v. Burridge*, 48 J. P. 71. The section does not apply to a licensed hawkster: *Llandudno v. Hughes*, 1900, 1 Q. B. 472, unless acting in breach of his license: *Woolwich v. Gardiner*, 1895, 2 Q. B. 497; nor to selling in one's own dwelling place or shop. See *Londonderry v. McElhinny*, 1 R. 9 C. L. 61; *Newtownards v. Woods*, 11 *ib.* 506.

By 41 & 42 Vict. c. 49, s. 86, every clerk or toll collector of any public market in Great Britain at all reasonable times may weigh or measure all goods offered or exposed for sale in any such market.

(s) See *post*, p. 414.

- (1.) With respect to obstructions and nuisances in the streets; and
- (2.) With respect to fires; (f) and
- (3.) With respect to places of public resort; and
- (4.) With respect to hackney carriages; (u) and
- (5.) With respect to public bathing; (x)

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act.

The expression in the provisions so incorporated "the superintendent constable," and the expression "any constable or other officer appointed by virtue of this or the special Act," shall, for the purposes of this Act, respectively include any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority: and the expression "within the prescribed distance" shall for the purposes of this Act mean within any urban district.

Notwithstanding anything in the provisions so incorporated, a license granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the license, or until the next general licensing meeting where a day for such meeting is appointed.

PART VII

Legal Proceedings

257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings

Recovery of expenses by local authority from owners.

(f) The fire brigade may exclude from the premises persons who interfere with their operations: *R. v. Reynolds*, 1893, 2 Q. B. 75.

(u) See 52 & 53 Vict. c. 14.

(x) By 9 & 10 Vict. c. 74, s. 38, for the recovery of the charges at . . . wash-houses the officers servants and others having the management thereof may detain the clothes brought to be washed or other goods and chattels of any person refusing to pay the charge to which such person may be liable or any part thereof till full payment thereof be made, and in case such payment be not made within seven days may sell such clothes goods and chattels or any of them returning the surplus proceeds of such sale after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles if any on demand, to such person. See also 10 & 11 Vict. c. 61, s. 7. By 41 & 42 Vict. c. 14, s. 10, the council and the commissioners respectively and their respective servants and agents may remove any person offending against any of the bye-laws made under this Act or the

recited Acts or any of them; and any bath or washhouse or open bathing place or covered swimming bath established under this Act or the recited Acts or any of them shall be taken to be a public and open place so as to make offences against decency therein criminal offences. By s. 11 the same persons may refuse admittance to any bath washhouse open bathing place or covered swimming bath or any of them to any person (1.) who shall have been convicted of wilfully disobeying any of the bye-laws in such bath etc., (2.) who shall have been convicted of any offence against public decency in any such baths etc. as aforesaid.

In the case of museums and gymnasiums, by 54 & 55 Vict. c. 22, s. 7 (2.) the urban authority may make byelaws for regulating the conduct of persons admitted to the museum or gymnasium, and may by any such byelaw provide for the removal from the museum or gymnasium of any person infringing any such byelaw by any officer of the urban authority or by any constable. And sec. as to libraries and art schools, 1 Ed. VII. c. 19, ss. 3, 13.

Sect. 257. by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand. (y)

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same.

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act. (z)

PART X

Miscellaneous

305. [Entry on lands for the purposes of Act under order of justices.]

Compensation
in case of
damage by
local autho-
rity.

308. Where any person sustains any damage (a) by reason of the exercise of any of the powers of this Act, (b) in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, (c) or if the compensation claimed does not exceed the sum of twenty pounds, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction. (d)

As to con-
struction of
incorporated
Acts.

316. In the construction of the provisions of any Act incorporated with this Act the term "the special Act" includes this Act; the term "the limits of the special Act" means the limits of district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be.

PART XI

Saving Clauses

Saving of
works and
property of
certain autho-
rities, and for
navigation and
water rights,
etc.

327. Nothing in this Act shall be construed to authorize any local authority—

(1.) To use injure or interfere with any sluices floodgates sewers groynes or sea defences or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or

(y) Notice of apportionment is not sufficient: *Greece v. Hunt*, 2 Q. B. D. 389.

As to service of notices, etc., see s. 267.

(z) See 7 Ed. VII. c. 53, s. 40.

(a) See *Southampton Co. v. Local Board*, 8 E. & B. 801. As to nuisance, see *Barnett v. Eccles*, 1900, 2 Q. B. 423; *Dent v. Bournemouth*, 66 L. J. Q. B. 395, and temporary nuisance: *Harrison v. Southwark*, 1891, 2 Ch. 409. As to paving, etc., *R. v. Wallasey*, L. R. 4 Q. B. 351; *Nutter v. Accrington*, 4 Q. B. D. 375; *Burgess v.*

Northwich, 6 Ib. 264; *Durrant v. Brank-some*, 1897, 2 Ch. 291.

(b) Does not apply where the acts are done on land not the property of the claimant: *Horton v. Colwyn*, 1908, 1 K. B. 327.

(c) See ss. 179–181.

(d) See *Walshaw v. Brighouse*, 1899, 2 Q. B. 286. As to mines, see *Re Dudley Corporation*, 8 Q. B. D. 86, and 46 & 47 Vict. c. 37.

any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land; or, Sect. 327.

- (2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in Her Majesty's Principal Secretary of State for the War Department for the time being; or,
- (3.) To interfere with any river canal dock harbour lock reservoir or basin, so as to injuriously (e) affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river canal dock harbour lock reservoir or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof; or,
- (4.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river canal dock harbour reservoir or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference; or,
- (5.) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is authorized by virtue of any Act of Parliament to navigate or use such river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof; or,
- (6.) To execute any works in through or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorized officer or agent. And nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

330. No transfer of powers and privileges under this Act shall deprive any body of persons or person authorized by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal. Provision as to transfer of powers, etc.

331. Any body of persons or person authorized by virtue of any Act of Parliament to navigate on or use any river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock harbour or basin, may, at their own expense, and on substituting other sewers drains culverts and pipes equally effectual, and certified Provision as to alteration of sewers.

(e) See *Manchester Co. v. Worksop*, 23 B. 198.

Sect. 331. as such by the surveyor to the local authority, take up, divert, or alter the level of any sewers drains culverts or pipes constructed by any local authority, and passing under or interfering with such rivers canals docks harbours or basins, or the towing-paths thereof, and may do all such things as may be necessary for carrying into effect such taking up diversion or alteration.

Saving for water rights generally. 332. Nothing in this Act shall be construed to authorize any local authority to injuriously affect (*f*) any reservoir canal river or stream or the feeders thereof or the supply quality or fall of water contained in any reservoir canal river stream or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid. (*g*)

Saving for mines, etc. 334. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining puddling and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively. (*h*)

Saving for collegiate bodies and Government departments. 335. Any collegiate or other corporate body required or authorized by or in pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865, and the Sewage Utilization Act, 1867, shall apply in substitution for the last-mentioned provisions.

Saving for Metropolitan Board of Works. 336. Nothing in or done under this Act shall affect any outfall or other works of the Metropolitan Board of Works (*i*) (although beyond the metropolis) executed under the Metropolis Management Act, 1855, and the Acts amending the same, or take away, abridge, or prejudicially affect any right power authority jurisdiction or privilege of the Metropolitan Board of Works.

Saving for proceedings under local Acts. 340. Where within the district of a local authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act, proceedings may be instituted at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications:

1. That no person shall be punished for the same offence both under a local Act and this Act; and
2. That the local authority shall not, by reason of any local Act in force within their district, be exempted from the performance of any duty or obligation to which they may be subject under this Act. (*j*)

Powers of Act to be cumulative. 341. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament law or custom, and such other powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

(*f*) See *Roberts v. Gwyrfai*, 1899, 2 Ch. 608. By s. 333 disputes are to be referred to arbitration.

(*g*) See *R. v. Darlington*, 35 L. J. Q. B. 45.

(*h*) See *Att.-Gen. v. Logan*, 1891, 2 Q. B. 100.

(*i*) Now London County Council.

(*j*) See *Ashton v. Pugh*, 1898, 1 Q. B. 45; *Lodge v. Huddersfield*, *ib.* 859.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act. (*k*) Sect. 341.

As to the following Acts—namely the Infectious Diseases Acts, 1889 and 1890—the first now applies to every urban rural and port sanitary district, (*l*) the second to such districts when adopted. (*m*)

By the Infectious Diseases (Notification) Act, 1889 (52 & 53 Vict. c. 72)— Infectious diseases.

6. The expression “infectious diseases to which this Act applies” means any of the following diseases, namely small-pox cholera diphtheria membranous croup erysipelas the disease known as scarlatina or scarlet fever and the fevers known by any of the following names typhus typhoid enteric relapsing continued or puerperal and includes as respects any particular district any infectious disease to which this Act has been applied by the local authority.

By sect. 7 the local authority may extend the definition.

By the Infectious Diseases (Prevention) Act, 1890 (53 & 54 Vict. c. 34)—

5. Section 120 of the Public Health Act, 1875, so far as it applies to any 38 & 39 Vict. urban or rural sanitary district in which this section is adopted shall be repealed c. 55, s. 120. and the following provisions shall be in force instead thereof.

(1.) Where the medical officer of health of any local authority or any other registered medical practitioner certifies that the cleansing and disinfecting of any house or part thereof and of any articles therein likely to retain infection would tend to prevent or check infectious diseases, (*n*) the clerk to the local authority shall give notice in writing to the owner or occupier of such house or part thereof that the same and any such articles therein will be cleansed and disinfected by the local authority at the cost of such owner or occupier unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part thereof and any such articles therein to the satisfaction of the medical officer of health within a time fixed in the notice. Cleansing, etc., premises.

(2.) If within twenty-four hours from the receipt of the notice the person to whom the notice is given does not inform the local authority as aforesaid, or if having so informed the local authority he fails to have the house or part thereof and any such articles disinfected as aforesaid within the time fixed in the notice, the house or part thereof and articles shall be cleansed and disinfected by the officer of the local authority under the superintendence of the medical officer of health, and the expenses incurred may be recovered from the owner or occupier in a summary manner.

(3.) Provided that where the owner or occupier of any such house or part thereof is unable in the opinion of the local authority or of their medical officer of health effectually to cleanse and disinfect such house or part thereof and any

(*k*) *Lea v. Facey*, 17 Q. B. D. 139.

(*l*) 62 & 63 Vict. c. 8 (Huddersfield excepted).

(*m*) As to port sanitary authorities, see

59 & 60 Vict. c. 20.

(*n*) That is as defined in the Act of 1889: see s. 2.

Sect. 5. article therein likely to retain infection, the same may without any such notice being given as aforesaid but with the consent of such owner or occupier be cleansed and disinfected by the officer of and at the cost of the local authority.

Disinfection of bedding, etc. 6. Any local authority or the medical officer of health of any local authority generally empowered by the authority in their behalf may by notice in writing require the owner of any bedding clothing or other articles which have been exposed to the infection of any infectious disease to cause the same to be delivered over to an officer of the local authority for removal for the purpose of disinfection.

The bedding clothing and articles shall be disinfected by the authority and shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage the authority shall compensate the owner for the same, and the amount of compensation shall be recoverable in and in case of dispute shall be settled by a court of summary jurisdiction.

Power of entry. 17. For the purpose of carrying into effect the provisions of sect. 5 of this Act the local authority may by any officer appointed in their behalf who shall produce his authority in writing, enter on any premises between the hours of ten o'clock of the forenoon and six o'clock of the afternoon.

The Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59)—

PART I

General

Short title, construction and extent of Act. 2. (1.) This Act shall be construed as one with the Public Health Acts.
(2.) Part One of this Act shall extend to England and Wales and Ireland, exclusive of the administrative county of London. Part . . . Three . . . shall extend to any district in which [it is] adopted under the provisions of this Act.

(3.) This Act may be cited as the Public Health Acts Amendment Act, 1890, and this Act and the Public Health Acts may be cited together as the Public Health Acts.

Adoption of Act by local authorities. 3. The following provisions shall have effect with regard to the adoption of the parts of this Act, which are adoptive, by local authorities:—

(1.) An urban authority may adopt all or any of such parts.

(2.) A rural authority may adopt Part Three so far as it is declared by this Act to be applicable to such authority, without prejudice to the provisions of this Act relating to the investing of rural authorities with urban powers.

5. [Power to Local Government Board to extend Act to rural districts.]

Powers of Act cumulative. 10. (1.) All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

(2.) Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, provided that no person shall be liable to pay, except in the case of a daily penalty, more than one penalty in respect of the same offence.

11. (1.) The expression "ashpit" in the Public Health Acts and in this Act shall for the purposes of the execution of those Acts and of this Act include any ashtub or other receptacle for the deposit of ashes, faecal matter, or refuse. Sect. 11.
Interpretation.

(2.) A street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind shall be deemed to have been paved within the meaning of any provision of the Public Health Acts.

Provided that a street shall not be deemed to be paved to the satisfaction of an urban authority unless it is paved with such kind as well as with such quality of paving as the local authority shall consider suitable for the street.

(3.) In this Act if not inconsistent with the context—

The expression "local authority" means an urban sanitary authority or a rural sanitary authority, as the case may be, under the Public Health Acts, and the expressions "urban authority" and "rural authority" mean respectively an urban sanitary authority and a rural sanitary authority under those Acts.

The expressions "urban sanitary district" and "rural sanitary district" means respectively an urban sanitary district and a rural sanitary district under the Public Health Acts.

The expression "sanitary convenience" includes urinals, water-closets, earth-closets, privies, ashpits, and any similar convenience.

The expression "daily penalty" means a penalty for each day on which any offence is continued after conviction therefor.

The expressions "surveyor," "lands," "premises," "owner," "street," "house," "drain," "sewer" have respectively the same meaning as in the Public Health Acts. (o)

12. In the application of this Act to Ireland the following modifications shall have effect:—

(1.) Section five . . . shall not apply to Ireland.

(2.) This Act shall be construed as one with the Public Health (Ireland) Act, 1878. (p) Application
of Act to
Ireland.
41 & 42 Vict.
c. 52.

(3.) This Act and the Public Health (Ireland) Act, 1878, may be cited as the Public Health (Ireland) Acts.

(4.) A reference to a place of abode in England shall be construed to be a reference to a place of abode in Ireland.

(5.) The Local Government Board for Ireland shall be substituted for the Local Government Board.

(6.) The Chief Secretary shall be substituted for the Secretary of State.

(7.) The expression "the Public Health Acts" shall include the Public Health (Ireland) Act, 1878, and the said Act shall be substituted for the Public Health Act, 1875, and in particular references in this Act to sections thirty-eight, forty-one, eighty-four, one hundred and sixteen, one hundred and seventeen, . . . one hundred and fifty-eight, . . . of the Public Health Act, 1875, shall be respectively taken to be references to sections forty-eight, fifty-one, ninety-five, one hundred and thirty-two, one hundred and thirty-three . . . forty-two, . . . of the Public Health (Ireland) Act, 1878, and the references to section one hundred and sixteen . . . of the Public Health Act, 1875, shall be taken to be references to section one

(o) See *ante*, p. 269.

(p) See *post*, p. 551.

Sect. 12.

hundred and thirty-two . . . of the Public Health (Ireland) Act, 1878.

- (11.) The Lord Lieutenant by order made by and with the advice of the Privy Council shall be substituted for Her Majesty by Order in Council.

PART III

Sanitary and other Provisions

Chemical refuse, steam, etc., not to be turned into sewers.

17. (1.) Every person who turns or permits to enter into any sewer of a local authority or any drain communicating therewith—

(a.) Any chemical refuse, or

(b.) Any waste steam, condensing water, heated water, or other liquid (such water or other liquid being of a higher temperature than one hundred and ten degrees of Fahrenheit),

which, either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health, shall be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds.

(2.) The local authority, by any of their officers either generally or specially authorized in that behalf in writing, may enter any premises for the purpose of examining whether the provisions of this section are being contravened, and if such entry be refused, any justice, on complaint on oath by such officer, made after reasonable notice in writing of such intended complaint has been given to the person having custody of the premises, may by order under his hand require such person to admit the officer into the premises, and if it be found that any offence under this section has been or is being committed in respect of the premises, the order shall continue in force until the offence shall have ceased or the work necessary to prevent the recurrence thereof shall have been executed.

(3.) A person shall not be liable to a penalty for an offence against this section until the local authority have given him notice of the provisions of this section, nor for an offence committed before the expiration of seven days from the service of such notice, provided that the local authority shall not be required to give the same person notice more than once.

Provision as to local authority making communications with or altering, etc., drains and sewers.

18. (1.) Where the owner or occupier of any premises is entitled to cause any sewer or drain from those premises to communicate with any sewer of the local authority, the local authority shall, if requested to do so by such owner or occupier, and upon the cost thereof being paid in advance to the local authority, themselves make the communication and execute all works necessary for that purpose.

(2.) The cost of making such communication (including all costs incidental thereto) shall be estimated by the surveyor of the local authority, but in case the owner or occupier of the premises, as the case may be, is dissatisfied with such estimate, he may, if the estimate is under fifty pounds, apply to a court of summary jurisdiction to fix the amount to be paid for such cost, and if the estimate is over fifty pounds have the same determined by arbitration in manner provided by the Public Health Acts.

(3.) A local authority may agree with the owner of any premises that any sewer or drain which such owner is required, or desires, to make, alter, or enlarge, or any part of such sewer or drain, shall be made, altered, or enlarged by the local authority.

19. (1.) Where two or more houses belonging to different owners are connected

with a public sewer (*q*) by a single private drain, (*r*) an application may be made under section forty-one of the Public Health Act, 1875 (relating to complaints as to nuisances from drains), and the local authority may recover any expenses incurred by them in executing any works under the powers conferred on them by that section from the owners of the houses (*s*) in such shares and proportions as shall be settled by their surveyor or (in case of dispute) by a court of summary jurisdiction.

(2.) Such expenses may be recovered summarily or may be declared by the urban authority to be private improvement expenses under the Public Health Acts, and may be recovered accordingly.

(3.) For the purposes of this section the expression "drain" includes a drain used for the drainage of more than one building.

21. [Sanitary conveniences used in common to be properly cleansed by users.]

22. [Sanitary conveniences for manufactories, etc., to be suitable having regard to number employed.] (*t*)

27. (1.) Where any court, or where any passage leading to the back of several buildings in separate occupations, and not being a highway repairable by the inhabitants at large, (*u*) is not regularly and effectually swept and kept clean and free from rubbish or other accumulation to the satisfaction of the urban authority, the urban authority, may, if they think fit, cause to be swept and cleaned such court or passage.

(2.) The expenses thereby incurred shall be apportioned between the occupiers of the buildings situated in the court or to the back of which the passage leads in such shares as may be determined by the surveyor of the urban authority, or (in case of dispute) by a court of summary jurisdiction, and in default of payment any share so apportioned may be recovered summarily from the occupier on whom it is apportioned.

28. (1.) Sections one hundred and sixteen to one hundred and nineteen of the Public Health Act, 1875 (relating to unsound meat), shall extend and apply to all articles intended for the food of man, sold or exposed for sale, or deposited in any place for the purpose of sale, (*v*) or of preparation for sale within the district of any local authority.

34. [Hoards to be set up during progress of buildings, etc.] (*w*)

35. (1.) All vaults, arches, and cellars under any street, and all openings into such vaults, arches, or cellars in the surface of any street; and all cellar-heads, gratings, lights, and coal holes in the surface of any street, and all

(*q*) A drain-pipe passing through private property which received the drainage of several houses belonging to different owners held within the section: *Seal v. Merthyr Tydfil*, 1897, 2 Q. B. 543. See *R. v. Hastings*, 1897, 1 Q. B. 46.

(*r*) See *Brulford v. Eastbourne*, 1896, 2 Q. B. 205; *Hill v. Hair*, 1895, 1 Q. B. 906. Where two or more houses are drained by a single pipe situated on private land the houses belonging to different owners that will suffice to bring the pipe within these words of this section: *Thompson v. Eccles*, 1905, 1 K. B. 110. See *Jackson v. Wimbledon*, 1905, 2 K. B. 27. But it is otherwise where a sewer intervenes between the delivery pipe and such single pipe: *Wood Green v. Joseph*, 1903, A. C. 419.

(*s*) *Self v. Howe*, 1895, 1 Q. B. 685. The fact that neither owner can relay part of the drain without committing a trespass is no answer: *Lancaster v. Barnes*, 1898, 1 Q. B. 855.

(*t*) This section when in force is substituted for s. 38, P. H. Act, 1875, *ante*.

(*u*) See *Leigh v. King*, 1901, 1 K. B. 747; *Cubitt v. Mazze*, L. R. 8 C. P. 704.

(*v*) Does not extend to a person who has deposited on premises not his own, for the purpose of sale diseased meat belonging to him and intended for the food of man: *Firth v. McPhail*, 1905, 2 K. B. 300. Cf. *Cork v. Walsh*, 1908, 2 I. R. 234.

(*w*) This section when adopted is substituted for 10 & 11 Vict. c. 34 s. 80, *ante*.

Sect. 35. landings, flags, or stones of the path or street supporting the same respectively, shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong.

(2.) Where any default is made in complying with the provisions of this section, the urban authority may, after twenty-four hours notice in that behalf, cause anything in respect of which such default is made to be repaired or put into good condition, and the expenses of so doing shall be paid to the urban authority by such owner or occupier respectively, or in default may be recovered in a summary manner.

Means of ingress to and egress from places of public resort.

36. (1.) Every building which, after the adoption of this part of this Act in any urban district, is used as a place of public resort, shall, to the satisfaction of the urban authority, be substantially constructed and supplied with ample, safe, and convenient means of ingress and egress for the use of the public, regard being had to the purposes for which such building is intended to be used, and to the number of persons likely to be assembled at any one time therein.

(2.) The means of ingress and egress shall during the whole time that such building is used as a place of public resort be kept free and unobstructed to such extent as the urban authority shall require.

(3.) An officer authorized in writing by the urban authority, and producing his authority if so required, may at all reasonable times enter any such building to see that the provisions of this section are carried into effect.

(6.) For the purposes of this section the expression "place of public resort" means a building used or constructed or adapted to be used either ordinarily or occasionally as a church, chapel, or other place of public worship (not being merely a dwelling-house so used), or as a theatre, public hall, concert-room, public ball-room, public lecture-room, or public exhibition room, or as a public place of assembly for persons admitted thereto by tickets or by payment, or used, or constructed, or adapted to be used, either ordinarily or occasionally for any other public purpose, but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes.

Provided that this section shall not extend to any building used as a church or chapel or other place of public worship before or at the time of the adoption of this part of this Act.

37. [Safety of platforms, etc., erected or used on public occasions to the satisfaction of the surveyor.]

Trees in roads.

43. Any urban authority may, if they see fit, cause trees to be planted in any highway repairable by the inhabitants at large within their district, and may erect guards or fences for the protection of the same, provided that this power shall not be exercised nor shall any trees so planted be continued so as to hinder the reasonable use of the highway by the public or any person entitled to use the same, or so as to become a nuisance or injurious to any adjacent owner or occupier. (x)

Parks and pleasure grounds.

44. (1.) An urban authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public

(x) An adjoining owner or occupier may have done so for twenty years: *Lemmon v. Webb*, 1895, A. C. 1.

may be either with or without payment, as directed by the urban authority, or, with the consent of the urban authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday.

50. The following provisions of this part of this Act shall be applicable in rural sanitary districts, namely,— . . .

Section seventeen, relating to the turning of chemical refuse, steam, etc., into sewers.

Section eighteen, relating to local authorities making communication with drains, etc.

Section nineteen, relating to the extension of section forty-one of the Public Health Act, 1875.

Section twenty-one, relating to sanitary conveniences used in common. . . .

Section twenty-eight, relating to the extension of sections one hundred and sixteen to one hundred and nineteen inclusive of the Public Health Act, 1875. . . .

Application of part of Act in rural districts.

The Public Health Acts Amendment Act, 1907 (7. Ed. VII. c. 53)—

PART I

General

2. (1.) This Act shall be construed as one with the Public Health Acts.

(2.) Part I. of this Act shall extend to England and Wales and Ireland exclusive of the administrative County of London, and all or any of the remaining Parts or all or any of the sections thereof shall extend to any district to which all or any of those Parts or sections are applied by an Order of the Local Government Board or of the Secretary of State as the case may be.

Short title, construction, and extent of Act.

3. [Applications of Parts or section of Act by order of the Local Government Board or Secretary of State.]

7. [Appeals to quarter sessions, etc.]

10. [Compensation, how determined.]

11. All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

Powers of Act cumulative.

Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, but no person shall be liable, except in the case of a daily penalty, to more than one penalty in respect of the same offence.

12. Nothing in this Act affects prejudicially any estate, right, power, privilege, or exemption of the Crown, and in particular nothing herein contained authorizes any local authority to take, use, or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay, or estuary, or any land, hereditaments, subjects, or right of whatsoever description belonging to His Majesty in right of His Crown, and under the management of the Commissioners of Woods or of the Board of Trade respectively, without the consent in writing of the Commissioners of Woods or the Board of Trade, as the case may be, on behalf of His Majesty first had and obtained for that purpose (which consent the said Commissioners and Board are hereby respectively authorized to give).

Crown rights.

Sect. 13.Interpreta-
tion.

13. In this Act, if not inconsistent with the context,—

The expression “local authority” means an urban sanitary authority, an urban district council, or a rural district council :

The expression “district of the local authority” means an urban sanitary district, an urban district, or a rural district :

The expression “daily penalty” means a penalty for each day on which an offence is continued after conviction therefor :

The expressions “lands,” “premises,” “owner,” “street,” “house,” “drain,” and “sewer” have respectively the same meaning as in the Public Health Acts :

The expressions “clerk,” “medical officer,” “surveyor,” and “inspector of nuisances” mean the clerk, medical officer of health, surveyor, and inspector of nuisances respectively of the district of the local authority :

The expression “dairy” includes any farm, farmhouse, cowshed, milk store, milk shop, or other place from which milk is supplied or in which milk is kept for the purposes of sale within (unless otherwise expressed) the district of the local authority :

The expression “dairyman” includes any cowkeeper, purveyor of milk, or occupier of a dairy within (unless otherwise expressed) the district of the local authority :

52 & 53 Vict.
c. 72.

The expression “infectious disease” means any infectious disease to which the Infectious Disease (Notification) Act, 1889, for the time being applies within the district of the local authority :

The expressions “the commencement of this Part” and “the commencement of this section” used in relation to any Part or section of this Act mean respectively the date at which, by an Order made by the Local Government Board, or by the Secretary of State as the case may be, in pursuance of this Act, and subject to any conditions or adaptations specified in that Order, the Part or section is declared to be in force :

Other expressions to which a special meaning is assigned by the Public Health Act, 1875, have respectively the same meaning in this Act as they have in that Act.

Application
of Act to
Ireland.

14. In the application of this Act to Ireland the following modifications shall have effect :—

(1.) This Act may be cited with the Public Health (Ireland) Acts, 1878 to 1900, as the Public Health (Ireland) Acts, 1878 to 1907 : (y)

(2.) A reference to a place of abode in England shall be construed to be a reference to a place of abode in Ireland :

(3.) The Local Government Board for Ireland shall be substituted for the Local Government Board :

(4.) The Chief Secretary shall be substituted for the Secretary of State :

(5.) The Department of Agriculture and Technical Instruction for Ireland shall be substituted for the Board of Agriculture and Fisheries :

(8.) The Public Health (Ireland) Acts, 1878 to 1900, shall be substituted for the Public Health Acts, the Public Health (Ireland) Acts, 1878 to 1907, shall be substituted for the Public Health Acts, 1875 to 1907, and the Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875, and in particular references in this Act to the sections of the Public Health Act, 1875, mentioned in the first column of the schedule to this Act shall be construed as references to the corresponding sections of the Public Health (Ireland) Act, 1878, mentioned in the second column of that schedule :

(y) See *post*, p. 551.

- (9.) In subsection (2.) of section seventy-four of this Act, the words "and the sanitary authority may" shall be substituted for the words "and the local authority may": **Sect. 14.**
- (10.) The provision with respect to section twenty-eight of the Town Police Clauses Act, 1847, shall extend to section seventy-two of the Towns Improvement (Ireland) Act, 1854. 10 & 11 Vict. c. 89.
17 & 18 Vict. c. 103.

PART II

Streets and Buildings

15. [Deposit of plan to be of no effect after three years.]

When the deposit of any plans and sections has been declared to be of no effect, a fresh deposit shall be necessary before the work to which they relate is commenced.

The local authority shall give notice of the provisions of this section to every person intending to lay out a new street or erect a new building in relation to which plans and sections have been deposited before the commencement of this section, but the laying out of which street or erection of which building shall not have been commenced, and shall attach a similar notice to the approval of every such intended work in relation to which plans and sections have been deposited subsequent to the commencement of this section.

16. The local authority may retain any drawings, plans, elevations, sections, specifications, and written particulars, descriptions or details, deposited with and approved by them in pursuance of any enactment for the time being in force in the district or of any byelaw thereunder. As to plans deposited with local authority.

17. (1.) The local authority may, on the deposit of a plan and sections of a new street in pursuance of a byelaw in force in the district, by order vary the intended position, direction or termination, or level of the new street so far as is necessary for the purpose of securing more direct, easier, or more convenient means of communication with any other street or intended street or for the purpose of securing an adequate opening at either end of the new street, or of securing compliance with any enactment or byelaw in force in the district for the regulation of streets and buildings. Power to vary position or direction and to fix beginning and end of new streets.

The local authority may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits of the new street as determined by the points so fixed shall have effect for the purposes of the Public Health Acts, 1875 to 1907, and of any byelaws made under those Acts and in force within the district.

(2.) The powers of the local authority under this section shall not be exercisable in any case in which it is shown, to their satisfaction, that compliance with their order will entail the purchase of additional lands by the owner of the lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands.

(3.) Where the local authority make an order under this section a person shall not lay out or construct the new street otherwise than in compliance with the order. If any person acts in contravention of this provision, he shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

(4.) The local authority shall pay compensation to any person injuriously affected by the exercise by the local authority of their powers under this section.

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18. [Crossing for cattle, etc., over footways to be constructed under supervision of local authority.]

As to urgent
repairs to
private
streets.

19. (1.) Where repairs are required in the case of any street, not being a highway repairable by the inhabitants at large, to obviate or remove danger to any passenger or vehicle in the street, the local authority may give notice in writing to the owners of the lands and premises fronting, adjoining, or abutting on the street, and may require the owners to execute, within a time to be specified in the notice, such repairs as are described in the notice.

(2.) If, within the time specified in the notice, the repairs described in the notice are not executed, the local authority may execute the repairs, and may recover summarily, as a civil debt, the cost of the repairs so executed from the owners in default, and the amount recoverable from each owner shall be in the proportion which the extent of his lands and premises fronting, adjoining, or abutting on the street, bears to the total extent of all lands and premises so fronting, adjoining, or abutting.

(3.) Where the name or place of abode of an owner cannot be found by the local authority, a copy of the notice shall be sent by post to or left with the occupier of the lands and premises to which the notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of the lands and premises.

55 & 56 Vict.
c. 57.

(4.) In every case in which, within the time specified in the notice, the majority in number or rateable value of owners of lands and premises in the street, by a notice in writing, require the local authority to proceed, in relation to the street, under section one hundred and fifty of the Public Health Act, 1875, or, if the Private Street Works Act, 1892, (z) is in force in the district, under that Act, the local authority shall so proceed; and where the local authority so proceed they shall, on the completion of the necessary works, forthwith declare the street to be a highway repairable by the inhabitants at large, and on and after the date of the declaration the street shall become a highway so repairable.

Recovery of
damages
caused to
footways by
excavations.

20. If the footway of any street repairable by the inhabitants at large be injured by or in consequence of any excavations or other works on lands adjoining thereto the local authority may repair or replace the footway so injured, and all damages and expenses of or arising from such injury and repair or replacement shall be paid to the local authority by the owner of the lands on which such excavations or other works have been made, or by the person causing or responsible for the injury.

21. [Power to alter names of streets.]

Buildings at
corner of
streets.

22. The local authority may require the corner of any building intended to be erected at the corner of two streets to be rounded off or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise as they may determine and for any loss which may be sustained through the exercise of the powers by this section conferred upon the local authority they shall pay compensation.

What to be
deemed new
buildings.

23. For the purposes of this Act and the Public Health Acts, and any bye-laws made thereunder, each of the following operations, namely:—

(a.) The re-erection, wholly or partially, of any building of which an outer wall is pulled down or burnt down to or within ten feet of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down or burnt down as to leave only the framework of the lowest storey;

(z) See *ante*, p. 295.

- (b.) The conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only ;
- (c.) The re-conversion into a dwelling-house of any building which has been discontinued as or appropriated for any purpose other than that of a dwelling-house ;
- (d.) The making of any addition to an existing building by raising any part of the roof, by altering a wall, or making any projection from the building, but so far as regards the addition only ; and
- (e.) The roofing or covering over of an open space between walls or buildings ;

shall be deemed to be the erection of a new building.

25. If any yard in connection with, and exclusively belonging to, a dwelling-house shall not be so formed, flagged, asphalted, or paved, or shall not be provided with such works on, above, or below the surface of the yard, as to allow of the effectual drainage of the subsoil or surface of the yard by safe and suitable means to a proper outfall, the local authority may, by notice in writing, require the owner of the dwelling-house, within twenty-one days after the service of the notice, to execute all such works as are necessary for the effectual drainage of the subsoil or surface of the yard to a proper outfall. Yards to be paved, etc.

If, within the said period of twenty-one days, the owner has failed to complete the execution of the works specified in the notice, the local authority may execute the works, and may recover from the owner in a summary manner as a civil debt the expenses incurred by the local authority in the execution of the works.

26. [Entrances to courts, etc., not to be closed.]

27. (1.) Before any person erects or sets up a temporary building he shall apply to the local authority for permission so to do. As to temporary buildings.

The application shall be accompanied by a plan and sections of the proposed building drawn to a scale of not less than one inch to every eight feet, and a block plan, drawn to a convenient scale, showing the intended situation and surroundings of the proposed building, together with a specification describing the materials proposed to be used in the construction of the building, and the purpose for which the building is intended.

(2.) The local authority shall, within one month after the delivery of the plans and sections and specification, signify in writing their approval or disapproval of the building to the person proposing to erect or set up the building.

(3.) The local authority may attach to their approval any condition which they deem proper with regard to the sanitary arrangements of the building, the ingress thereto and the egress therefrom, protection against fire, and the period during which the building shall be allowed to stand.

(4.) If any such building is begun, erected, or set up without such application accompanied by such plan, sections, and specifications as this section requires, or after the disapproval of the local authority or before the expiration of one month without their approval, or is in any respect not in conformity with any condition attached by the local authority to their approval, the person who began, erected, or set up the building, or, if any such building is not removed within the period allowed by the local authority, the owner of the building shall for every such offence be liable to a penalty not exceeding forty shillings, and to a daily penalty not exceeding the like amount ; and the local authority may cause the building to be pulled down or removed, and any expense incurred by

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them in and about the pulling down or removal of the building may, at their discretion, be recovered summarily as a civil debt from the owner of the building or from the person erecting or setting up the building.

(5.) Where any such building is pulled down or removed; by the local authority under the powers of this section the local authority may sell the materials or any part of the materials, and shall apply the proceeds of the sale in or towards payment of the costs and expenses incurred by them in relation to the pulling down or removal of the building, and shall pay the balance to the owner of the building.

(6.) The following buildings shall be exempt from the operation of this section :—

(a.) Any building expressly exempt from the operation of the Public Health Acts or the byelaws made under those Acts and in force for the time being within the district;

(b.) Any building erected or set up for the purpose of protecting or of preventing the acquisition of rights to light;

(c.) Any temporary building set up as part of the plant to be used in or about or in connection with the construction, alteration, or repair of any building or other work; but so far as regards only so much of this section as relates to plans, sections, and specifications.

Removal of
materials in
streets.

28. The local authority may remove, appropriate, use and dispose of all old materials existing in any street at the time of the execution by the local authority of any works in such street unless the owners of buildings and lands in such street within forty-eight hours after notice so to do served on them by the surveyor remove such materials or their respective proportions thereof, and the local authority shall allow such sum as may be the reasonable value thereof to such owners for any materials which have been used or removed by the local authority, and in case of dispute the amount to be allowed shall be settled in the manner provided by the Public Health Act, 1875, with respect to compensation for damage sustained by reason of the exercise of any powers of that Act.

Deposit of
building
materials or
excavations
not to be
made with-
out consent.

29. It shall not be lawful for any person without the consent of the local authority in writing first obtained to lay any building materials, rubbish, or other thing, or make any excavation on or in any street repairable by the inhabitants at large, and when with such consent any person lays any building materials, rubbish, or other thing, or makes any excavation on or in any street, he shall, at his own expense, cause the same to be sufficiently fenced and a sufficient light to be fixed in a proper place on or near the same and to be continued every night from sunset to sunrise, and shall remove such materials, rubbish, or thing or fill up such excavation (as the case may be) when required by the local authority; and, if any person fails to comply in any respect with the requirements of this enactment, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and the local authority may remove any such materials, rubbish, or thing, or fill up such excavation (as the case may be), and recover the expenses from the offender summarily as a civil debt.

Dangerous
places to be
repaired or
enclosed.

30. With respect to the repairing or enclosing of dangerous places the following provisions shall have effect (namely) :—

(1.) If in any situation fronting, adjoining, or abutting on any street or public footpath, any building, wall, fence, steps, structure or other thing, or any well, excavation, reservoir, pond, stream, dam or bank is, for want of sufficient repair, protection, or enclosure dangerous to the persons lawfully using the street or footpath, the local authority may by notice in writing served upon the owner, require him, within

the period specified in the notice and herein-after in this section referred to as the "prescribed period," to repair, remove, protect, or enclose the same so as to prevent any danger therefrom :

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- (2.) If, after service of the notice on the owner, he shall neglect to comply with the requirements thereof within the prescribed period, the local authority may cause such works as they think proper to be done for effecting such repair, removal, protection, or enclosure, and the expenses thereof shall be payable by the owner, and may be recovered summarily as a civil debt.

31. If any land (other than land forming part of any common) adjoining any street is allowed to remain unfenced or if the fences of any such land are allowed to be or remain out of repair, and such land is, owing to the absence or inadequate repair of any such fence, a source of danger to passengers, or is used for any immoral or indecent purposes, or for any purpose causing inconvenience or annoyance to the public, the Local Government Board on the application of the local authority may by Order empower the local authority to proceed under this section, and, in that case, at any time after the expiration of fourteen days from the service upon the owner or occupier of notice in writing by the local authority requiring the land to be fenced or any fence of the land to be repaired, the local authority may cause the land to be fenced or may cause the fences to be repaired in such manner as they think fit, and the reasonable expenses thereby incurred shall be recoverable from such owner or occupier summarily as a civil debt.

Fencing lands adjoining streets.

32. [Hoards to be securely erected.]

33. Nothing in this Part or in any bylaws to be made under any enactment extended by this Part shall apply to a building (other than a dwelling-house) belonging to a railway company, or to any company or other public body authorized to construct, maintain, or improve a harbour, pier or dock, or to the owners of any canal or inland navigation, and used by the company, public body, or owners as a part of or in connection with their railway, harbour, pier, dock, canal or inland navigation.

Exemption of buildings of railway companies and others.

PART III

Sanitary Provisions

35. For the purposes of the Public Health Act, 1875—

- (1.) Any cistern used for the supply of water for domestic purposes so placed, constructed, or kept as to render the water therein liable to contamination, causing or likely to cause risk to health ;
- (2.) Any gutter, drain, shoot, stack-pipe, or down-spout of a building which by reason of its insufficiency or its defective condition shall cause damp in such building or in an adjoining building ; and
- (3.) Any deposit of material in or on any building or land which shall cause damp in such building or in an adjoining building so as to be dangerous or injurious to health ;

shall be deemed to be a nuisance within the meaning of the said Act.

38. Before any drain existing at the commencement of this section and then not communicating with any sewer of the local authority shall be made to communicate with any sewer of the local authority, the local authority may require the same to be laid open for examination by the surveyor, and no such communication shall be made until the surveyor shall certify that such drain may be properly made to communicate with such sewer.

Local authority may require old drains to be laid open for examination by surveyor before communicating with sewers. Provision and conver-

39. (1.) In this section unless the context otherwise requires—

The expression "closet accommodation" includes a receptacle for human

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 sion of closet
 accommo-
 dation.

excreta, together with the structure comprising such receptacle and the fittings and apparatus connected therewith ;

The expression "pail closet" means closet accommodation including a moveable receptacle for human excreta ;

The expression "water-closet" means closet accommodation used or adapted or intended to be used in connection with the water carriage system, and comprising provision for the flushing of the receptacle by means of a fresh water supply, and having proper communication with a sewer ;

The expression "slop-closet" means closet accommodation used or adapted or intended to be used in connection with the water carriage system, and comprising provision for the flushing of the receptacle by means of slops or waste liquids of the household or rain water, and having proper communication with a sewer ;

The expression "a sufficient water supply and sewer" means a water supply and a sewer which are sufficient and reasonably available for use in, or in connection with, the efficient flushing and cleansing of, and the efficient removal of excreta from such number of proper and sufficient water-closets and slop-closets, or from such one or more of either class of closet as, in pursuance of this section, may be required to be provided in any particular case.

(2.) Within one month after the deposit of any plan by a person intending to erect a new building, the local authority, where there are a sufficient water supply and sewer, may by written notice to that person require the new building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet as the circumstances of the case may render necessary.

Any person who fails to comply with any requirement of the local authority under this subsection shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(3.) If, on the report of the medical officer or the surveyor or the inspector of nuisances, the local authority are satisfied that sufficient closet accommodation has not been provided at or in connection with a building and the case is not one in which sufficient closet accommodation can be provided by the alteration of any existing closet accommodation in pursuance of this section, the local authority, where there are a sufficient water supply and sewer, may by written notice to the owner or owners of the building require the building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet as the circumstances of the case may render necessary.

If the owner or owners of the building fail to comply with any requirement of the local authority under this subsection, the local authority may at the expiration of a time which shall be specified in the notice and shall be not less than fourteen days after the service of the notice, do the work required by the notice, and may recover summarily as a civil debt from the owner or owners the expenses incurred by the local authority in so doing.

(4.) The local authority, where there are a sufficient water supply and sewer, may by written notice to the owner or owners of a building require any existing closet accommodation (other than a water-closet or a slop-closet) provided at or in connection with the building to be altered, so as to be converted into a water-closet or slop-closet.

If the owner or owners of the building fail to comply with any requirement of the local authority under this subsection, the local authority may, at the expiration of a time which shall be specified in the notice and shall not be less

than fourteen days after the service of the notice, do the work required by the notice.

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Where in pursuance of this subsection any work of alteration is done by the local authority in default of the owner or owners in respect of a pail closet, the expenses of the work shall be borne by the local authority, and where in pursuance of this subsection any work of alteration is done by the local authority in default of the owner or owners in respect of any existing closet accommodation other than a pail closet, one half of the expenses of the work shall be borne by the local authority, and the remainder of the said expenses shall be borne by the owner or owners and shall be recoverable summarily as a civil debt.

Every notice in pursuance of this subsection shall state the effect of the subsection.

(5.) Nothing in this section shall have effect with respect to a slop-closet, unless or until the Local Government Board have been satisfied by the local authority, and have by order declared that the circumstances of the district of the local authority are such as to render it necessary or expedient that this section shall have effect with respect to a slop-closet.

Any order in pursuance of this subsection shall be published in such manner as the Local Government Board direct.

40. (1.) Where under section thirty-nine of this Act the local authority do any work for the common benefit of two or more buildings belonging to different owners, the expenses which under that section are recoverable by the local authority from the owners shall be paid by the owners of those buildings in such proportions as shall be determined by the surveyor, or in case of dispute by a petty sessional court.

Payment for
works of
common
benefit.

41. Any person duly authorized in writing by the local authority shall, on production of his authorization, be admitted into any premises for the purposes of section thirty-nine of this Act, and the provisions of section one hundred and two (a) . . . of the Public Health Act, 1875, shall, with the necessary modifications, apply to his admission.

Entry on
premises.

42. [Appeals.]

(2.) Pending the decision of the court upon the appeal the local authority shall not be empowered to execute any works to which the notice relates, and any proceeding which may have been commenced for the recovery of the expenses shall be stayed.

45. (1.) If the medical officer, surveyor, or inspector of nuisances reports to the local authority that he has reasonable grounds for believing that any drains of any building are so defective as to be injurious or dangerous to health, the local authority may authorize their medical officer, surveyor, or inspector of nuisances to apply the smoke or coloured water test, or other similar test (not including a test by water under pressure), to the drains, subject to the condition that either the consent of the owner or occupier of the building must be given to the application of the test, or an order of a court of summary jurisdiction having jurisdiction in the place where the building is situated must be obtained, authorizing the application of the test.

Testing of
drains on
report of
defects.

(2.) If on the application of the test the drains are found to be defective, the local authority may, by notice specifying generally the defect, require the owner of the premises to do all works necessary for remedying it within a reasonable time named in the notice, and if the owner fails so to do the work the local authority may themselves do the work, and the expense of so doing the work may either be recovered from the owner of the building summarily as a civil

(a) S. 118, Public Health (Ireland) Act, 1907.

Sect. 45. debt or may be declared by the local authority to be private improvement expenses, and may be recoverable accordingly.

(3.) The owner and occupier of any building shall give all reasonable facilities for the application of any test which has been consented to or authorized in pursuance of this section, and, if the owner or occupier fails to do so, he shall be liable in respect of each offence to a penalty not exceeding forty shillings and to a daily penalty not exceeding twenty shillings.

Provision for
filling up
cesspools, etc.

46. If it shall appear to the local authority by the report of the medical officer, surveyor, or inspector of nuisances that any cesspool or other receptacle used or formerly used as a receptacle for excreta or other obnoxious matter, or for the whole or any part of the drainage of a house, or that any ashpit or any well or disused well belonging to any such house or part of a house is prejudicial to health, or otherwise objectionable for sanitary reasons, and that it is desirable that the same should be filled up or removed, or so altered as to remove any such objection as aforesaid, the local authority may, if they think fit, by notice in writing, require the owner or occupier of such house or part of a house within a reasonable time, to be specified in the notice, to cause such cesspool, receptacle, ashpit, or well to be filled up or removed, and any drain communicating therewith to be effectually disconnected, destroyed, or taken away, or to cause such cesspool, receptacle, ashpit, or well to be so altered as to remove any such objection as aforesaid.

Where it appears that any such cesspool, receptacle, ashpit, or well is used in common by the occupiers of two or more houses, or parts of houses, the notice for filling up or removal of any such cesspool, receptacle, ashpit, or well may be served on any one or more of the owners or occupiers of such houses, and it shall not be necessary to serve such notice on all such owners or occupiers.

If default is made in complying with the requisitions of a notice under this section the local authority may themselves carry out the requisitions, and may recover the expenses incurred by them in so doing from the owners or occupiers in default in a summary manner as a civil debt, or, where the owners are the persons liable, as private improvement expenses are recoverable under the Public Health Acts.

Public conveniences
and lavatories.

47. The local authority may provide and maintain in proper and convenient situations sanitary conveniences in or under any street repairable by the inhabitants at large, and may provide and maintain in proper and convenient situations lavatories in or under any such street for the use of the public, and may employ and pay attendants and make reasonable charges for the use of any sanitary conveniences (other than a urinal) or of any lavatory so provided. The local authority may make byelaws for the management of the sanitary conveniences and lavatories, and as to the conduct of persons frequenting the same.

The local authority may let any such sanitary conveniences and any such lavatories for such periods, at such rents, and subject to such conditions as to the charges to be made for the use thereof and otherwise, as they think proper.

Removal of
trade refuse.

48. If the local authority are required by the owner or occupier of any premises to remove any trade refuse (other than sludge), the local authority shall do so, and the owner or occupier shall pay to them for doing so a reasonable sum, to be settled in case of dispute by order of a court of summary jurisdiction; and if any question arises in any case as to what is to be considered as trade refuse, that question may be decided on the complaint of either party by a court of summary jurisdiction, whose decision shall be final.

Summary
power to
provide sinks

49. In addition to all other powers vested in a local authority, the local authority, if it shall appear to them on the report of the surveyor, medical officer, or inspector of nuisances, that any building built before or after the

commencement of this section of this Act is not provided with a proper sink or drain or other necessary appliances for carrying off refuse water from such building, may give notice in writing to the owner or occupier of such building requiring him in the manner and within the time to be specified in such notice, not being less than twenty-eight days, to provide such sink, drain, or other appliances. If the owner or occupier makes default in complying with such requirement to the satisfaction of the local authority within the time specified in such notice he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and in case of default the local authority may, if they think fit, themselves provide such sink, drain, or other appliances, and the expenses incurred by them in so doing shall be repaid to them by such owner or occupier, and may be recovered summarily as a civil debt.

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and drains
for buildings.

50. The local authority may provide and maintain an ambulance for use in any case of accident, or other sudden or urgent disability, together with suitable attendants, and means of traction, and other requisites; and may allow the ambulance to be used by any other local authority or person subject to such terms and conditions as may be agreed upon.

Local authority may
provide an
ambulance.

PART IV

Infectious Diseases

53. [Power to require dairymen to furnish list of sources of supply where infectious disease attributable to milk supply.]

54. [Dairymen to notify infectious diseases existing among their servants.]

55. [Infected clothes not to be sent to laundry.]

(3.) The local authority may, on the application of any person, pay the expenses of the disinfection of any such bedding, clothes, or other things, if carried out by them or under their direction.

56. Where the local authority on the certificate of the medical officer are satisfied that the cleansing, purification, or destruction of any article in a dwelling-house is, by reason of the filthy condition of the article, necessary to prevent injury or to remove or obviate risk of injury to the health of any person in the dwelling-house, the local authority may cause the article to be cleansed, purified, or destroyed at their expense.

Filthy and
dangerous
articles to be
purified.

Where a person sustains damage in consequence of the exercise by the local authority of their powers under this section, and the condition of the article with respect to which those powers have been exercised is not attributable to his act or default, the local authority shall make reasonable compensation to that person.

57. [Child suffering from infectious disease not to attend school.]

58. [List of scholars to be furnished where scholar in a school is suffering from an infectious disease.]

59. [Provisions as to library books where infectious disease.]

64. [Driver, etc., of infected person to give notice.]

(2.) It shall be the duty of the local authority when so requested by the owner or driver of such public vehicle to provide for the disinfection of the same free of charge, except in cases where the owner or driver conveyed a person knowing that he was suffering from infectious disease.

66. (1.) If the medical officer, or any other legally qualified medical practitioner certifies that the cleansing and disinfecting of any house, or part of a house, and of any articles therein likely to retain infection, or the destruction of those articles would tend to prevent or check any dangerous infectious disease

Cleansing
and disinfecting of
premises, etc.

Sect. 66. the local authority shall serve notice on the master, or, where the house or part is unoccupied, on the owner of the house or part, that the house or part, and any such articles therein, will be cleansed and disinfected or (as regards the articles) destroyed, by the local authority unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part and any such articles, or destroy the articles to the satisfaction of the medical officer or of any other legally qualified medical practitioner within a time fixed in the notice.

(2.) If either—

(a.) Within twenty-four hours from the receipt of the notice the person on whom the notice is served does not inform the local authority as aforesaid; or

(b.) Having so informed the local authority, he fails to have the house or part thereof and any such articles disinfected, or the articles destroyed as aforesaid, within the time fixed in the notice; or

(c.) The master or owner without any such notice gives his consent; the house or part and articles shall be cleansed and disinfected, or the articles destroyed by the officers and at the cost of the local authority under the superintendence of the medical officer.

(3.) For the purpose of carrying into effect this section the local authority may enter by day on any premises.

(4.) When the local authority have disinfected any house, part of a house, or article, under the provisions of this section, they shall compensate the master or owner of the house, or part of a house, or the owner of the article, for any unnecessary damage thereby caused to the house, part of a house, or article; and when the local authority destroy any article under this section they shall compensate the owner thereof, and the amount of any such compensation shall be recoverable in a summary manner.

(5.) The expression "master" means the person in occupation of or having the charge, management, or control of the house or part of a house, and where the house is wholly let out in separate tenements, or is a lodging-house wholly let to lodgers, includes the person receiving the rent payable by the tenants or lodgers either on his own account, or as the agent of another person; and the expression "by day" means during the period between six o'clock in the morning and the succeeding nine o'clock in the evening.

67. (1.) The local authority may provide nurses for attendance on patients suffering from any infectious disease in their district who, owing to want of accommodation at the hospital or danger of infection, cannot be removed to the hospital, or in cases where removal to the hospital is likely to endanger the patients' health.

(2.) The local authority may charge such reasonable sums for the services of nurses provided by them as they think fit.

(3.) Nothing in this section shall be deemed to take away or diminish the necessity of providing proper hospital accommodation for persons suffering from infectious disease.

PART V

Common Lodging-Houses

74. (1.) Every common lodging-house, whether registered before or after the commencement of this section, shall be provided—

(a.) With sufficient and suitable sanitary conveniences, having regard to the number of persons who may be received in that house, and also where

Provision of
nursing
attendance
by local
authority.

Provision of
proper sani-
tary con-
veniences in
a common
lodging-house.

persons of both sexes are received in the common lodging-house, with proper separate accommodation for persons of each sex; and

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- (b.) With a water supply laid on sufficient for flushing any water-closets or urinals which are used in the house.

(2.) If it appears to the local authority that, in the case of any common lodging-house, default is made in any respect in complying with the provisions of this section, the local authority may, by notice in writing specifying the default, require the keeper of the common lodging-house to remedy the default.

(3.) If within twenty-eight days of the notice being served the default is not remedied to the satisfaction of the local authority, they may themselves do the work required to be done, and may recover in a summary manner from the keeper of the common lodging-house the expenses incurred by them in so doing, or may by order declare these expenses to be private improvement expenses.

PART VI

Recreation Grounds

76. (1.) The Local Government Board, for the purposes of this section, may make rules prescribing restrictions or conditions subject to which any powers conferred by the section shall with respect to any area in a public park or pleasure ground be exercisable in relation to the enclosure or setting apart of the area or in relation to the use of the area as the site of a building of convenience. Powers as to parks and pleasure gardens.

Subject to the restrictions or conditions prescribed by rules made under this section, the local authority shall, in addition to any powers under any general Act, have the following powers with respect to any public park or pleasure ground provided by them or under their management and control, namely, powers—

- (a.) To enclose during time of frost any part of the park or ground for the purpose of protecting ice for skating, and charge admission to the part inclosed, but only on condition that at least three-quarters of the ice available for the purpose of skating is open to the use of the public free of charge;
- (b.) To set apart any such part of the park or ground as may be fixed by the local authority, and may be described in a notice board affixed or set up in some conspicuous position in the park or ground for the purpose of cricket, football, or any other game or recreation, and to exclude the public from the part set apart while it is in actual use for that purpose;
- (c.) To provide any apparatus for games and recreations, and charge for the use thereof, or let the right of providing any such apparatus for any term not exceeding three years to any person;
- (d.) To provide or contribute towards the expenses of any band of music to perform in the park or ground;
- (e.) To enclose any part of the park or ground, not exceeding one acre, for the convenience of persons listening to any band of music, and charge admission thereto;
- (f.) To place, or authorize any person to place, chairs or seats in any such park or ground, and charge for, or authorize any person to charge for, the use of chairs so provided;

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- (g.) To provide and maintain any reading rooms, pavilions, or other buildings and conveniences, and to charge for admission thereto, subject in the case of reading rooms to the limitation that such a charge shall not be made on more than twelve days in any one year, nor more than four consecutive days ;
- (h.) To let any pavilion or other building so provided by them to any person for the purpose of entertainments, and authorize that person to charge for admission thereto ;
- (i.) To provide and maintain refreshment rooms in any such park, and either manage them themselves, or, if they think fit, let them to any person for any term not exceeding three years.

Power to
appoint
officers.

77. The local authority may appoint officers for securing the observance of this Part of this Act, and of the regulations and byelaws made thereunder, and may procure such officers to be sworn in as constables for that purpose, but any such officer shall not act as a constable unless in uniform or provided with a warrant.

PART VII*Police*

85. [Registries for servants.]

(4.) Any officer of the local authority or other person duly authorized in writing in that behalf by the local authority, and if so required exhibiting his authority, shall at all reasonable times be afforded by the person registered full and free power of entry into the registered premises for the purpose of inspecting the registered premises and the books required to be kept by such person.

86. [As to dealers in old metal and marine stores.]

(4.) Any officer of the local authority or other person duly authorized in writing in that behalf by the local authority, and if so required exhibiting his authority, shall have free access at all reasonable times to every such place of business, warehouse, store, and place of deposit, to inspect the same and the books by this section required to be kept, and every person who shall prevent, hinder, or obstruct any officer or person so authorized in the execution of his duty under this subsection shall be liable to a penalty not exceeding five pounds.

(5.) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills and otherwise in such manner as they think sufficient.

PART VIII*Fire Brigade*

Power to
police con-
stable to
enter and
break open
premises in
case of fire.

87. Any police constable acting under the orders of his superior officer, and any member of the fire brigade of the local authority being on duty, and any officer of the local authority, may enter and if necessary break into any building in the district being or reasonably supposed to be on fire, or any building or land adjoining or near thereto, without the consent of the owner or occupier thereof respectively, and may do all such acts and things as they may deem necessary for extinguishing fire in any such building or for protecting the same or rescuing any person or property therein from fire.

88. [Power to police officer to control street traffic at fires.]

89. The captain or superintendent of the fire brigade of the local authority or other officer of such fire brigade for the time being in charge of the engine or other apparatus for extinguishing fires attending at any fire within the district shall from the time of his arrival and during his presence thereat have the sole charge and control of all operations for the putting out of such fire, whether by the fire brigade of the local authority or any other fire brigade, including the fixing of the positions of fire engines and apparatus, the attaching of hose to any water pipes or water supply, and the selection of the parts of the building on fire or of adjoining buildings against which the water is to be directed.

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Captain of fire brigade or other officer to have control of operations.

PART X

Miscellaneous

92. The local authority—

(b) may, if they think fit, provide and maintain on or at any place within their district which abuts on the sea or any river, bathing-sheds or places, other conveniences with all necessary appliances, and may charge for the use thereof.

93. The local authority of any district may provide and maintain life-saving appliances at any place in their district where they think those appliances are likely to be of use.

Provision of life-saving appliances.

As to the Metropolis, by 18 & 19 Vict. c. 120 (Metropolis Local Management Act, 1855)—

Duties and Powers of Vestries and District Boards

68. Upon the commencement of this Act all sewers vested in the Metropolitan Commissioners of Sewers which are situate in any parish (b) mentioned in schedule (A.) to this Act (except such sewers as are mentioned in schedule (D.) to this Act), with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto appertaining, and the materials thereof, with all rights of way and passage used and enjoyed by such Commissioners over or to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall become vested in the vestry of such parish; and all sewers vested in the said Metropolitan Commissioners which are situate within any district mentioned in schedule (B.) to this Act, (c) except as before excepted, with all such works and things as aforesaid appertaining thereto, and all rights of way and passage used and enjoyed by such Commissioners over or to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall become vested in the board of works (b) for such district; and all sewers made and to be made within any such parish or district, except sewers and works vested or to be vested in the Metropolitan Board of Works, as herein-after mentioned, shall be vested in such vestry and board respectively.

Sewers (except main sewers) vested in vestries and district boards.

69. The vestry of every parish mentioned in schedule (A.) to this Act, and the board of works for every district mentioned in schedule (B.) to this Act, shall (subject to the powers by this Act vested in the Metropolitan Board of Works) from time to time repair and maintain the sewers (d) under this Act

Vestries and district boards to repair, etc., all sewers vested in them,

(b) Now the borough councils. Main sewers are vested in the county council: s. 135.

(c) Parishes united.

(d) Enforceable by mandamus: *R. v. St. Giles*, 66 L. J. Q. B. 337.

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and from time to time to construct new ones, etc.

vested in them, or such of them as shall not be discontinued, closed up, or destroyed under the powers herein contained, and shall cease to be made, repaired, and maintained such sewers and works, or such diversions or alterations of sewers and works, as may be necessary for effectually draining their parish or district, and shall cause all banks, wharves, docks, or defences abutting on or adjoining any river, stream, canal, pond, or watercourse in such parish or district to be raised, strengthened, or altered or repaired, where it may be necessary so to do for effectually draining or protecting from floods or inundation such parish or district; and it shall be lawful for any such vestry or district board to carry any such sewers or works through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or through or under any cellar or vault which may be under the pavement or carriageway of any street, and into, through, or under any lands whatsoever, (e) making compensation (f) for any damage done thereby, as herein-after provided; (g) and it shall be lawful for any such vestry or district board from time to time to enlarge, contract, raise, lower, arch over, or otherwise improve or alter all or any of the sewers, watercourses, and works which shall be from time to time vested in them or subject to their order and control, and to discontinue, close up, or destroy such of them as they may deem to have become unnecessary: Provided always, that no new sewer shall be made without the previous approval of the Metropolitan Board of Works; Provided also, that the discontinuance, closing up, destruction, or alteration of any sewer as aforesaid shall be so done as not to create a nuisance; and if by reason thereof any person shall be deprived of the lawful use of any covered sewer, it shall be the duty of the vestry or district board to provide some other sewer, or a drain as effectual for his use as the sewer of which he is so deprived: Provided also, that where the vestry or district board alter any sewer, or provide a new sewer in substitution for a sewer discontinued, closed up, or destroyed, they may contract or otherwise alter the private drains communicating with the sewer so altered, or with the sewer so discontinued, closed up, or destroyed, or may close up or destroy such private drains, and provide new drains in lieu thereof, as the circumstances of the sewerage may appear to them to require, but so that in every case the altered or substituted drain shall be as effectual for the use of the person entitled thereto as the drain previously used. (h)

Power to vestries and district boards to do works of improvement in sewers, etc., the expense of which shall be divided between the party liable to maintain such sewers, etc., and the parish or district.

70. Wherever any party is, by prescription, by reason of tenure, or otherwise, liable by law to maintain or do any repairs to sewers, banks, watercourses, or works in any such parish or district which the vestry or district board judge it necessary to alter or improve, it shall be lawful for them to make such alterations or improvements therein as they think proper, and to divide the expense of such alterations or improvements between the party liable to such maintenance or repairs and the parish, district, or persons who would have been wholly liable to the expense of such alterations or improvements if no party had been liable as aforesaid, so as to throw on the party liable to such maintenance or repairs such part of the expense of alterations or improvements as

(e) By s. 135 the same power is conferred on the county council as to main sewers.

(f) *I.e.* by court of summary jurisdiction up to £50, by arbitration beyond that amount: s. 225.

(g) It is not a condition precedent to entry that compensation should be tendered: *Peters v. Clarkson*, 7 M. & G. 548; *N. L. Ry. v. M. B. Works*, 28 L. J.

Ch. 909. Compensation is payable for diverting water in a defined channel: *Grand Junction v. Shugar*, L. R. 6 Ch. App. 483, but not underground water: *R. v. M. B. Works*, 3 B. & S. 710, nor for a hoarding not kept up an unreasonable time: *Herring v. M. B. Works*, 19 C. B. N. S. 510.

(h) See *R. v. St. Luke's*, 1 B. & S. 903.

may be equal to what would be incurred for such maintenance or repairs, and to throw on the parish, district, or persons aforesaid the residue of such expense, and to settle and adjust such proportions, either by some general regulation, or by order in each particular case, as they may think proper: Provided always, that nothing in this Act contained shall exempt from liability to do any works, or to pay the whole cost thereof, any person who, by prescription, by reason of tenure, or otherwise by law, is so liable. Sect. 70.

71. Every district board and vestry shall, by providing proper traps or other coverings, or by ventilation, or by such other ways and means as shall be practicable for that purpose, prevent the effluvia of sewers from exhaling through gullyholes, gratings, or other openings of sewers in any of the streets or other places within their district or parish. Gullyholes, etc., to be trapped.

72. Every vestry and district board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied, and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary. (i) Vestries and district boards to cause sewers to be cleansed, etc.

73. (j) If any house or building, whether built before or after the commencement of this Act, situate within any such parish or district be found not to be drained by a sufficient drain communicating with some sewer and emptying itself into the same, to the satisfaction of the vestry or board of such parish or district, and if a sewer of sufficient size be within one hundred feet of any part of such house or building, on a lower level than such house or building, it shall be lawful for the vestry or board, at their discretion, by notice in writing, (k) to require the owner of such house or building forthwith, or within such reasonable time as may be appointed by the vestry or board, to construct and make from such house or building into any such sewer a covered drain, (l) and such branches thereto, of such materials, of such size, at such level, and with such fall, as shall be adequate for the drainage of such house or building, and its several floors or stories, and also of its areas, waterclosets, privies, and offices, (if any,) and for conveying the soil, drainage, and wash therefrom into the said sewer, and to provide fit and proper paved or impermeable sloped surfaces for conveying surface water thereto, and fit and proper sinks, and fit and proper syphoned or otherwise trapped inlets and outlets for hindering stench therefrom, and fit and proper water supply and water supplying pipes, cisterns, and apparatus for scouring the same, and for causing the same to convey away the soil, and fit and proper sand traps, expanding inlets, and other apparatus for hindering the entry of improper substances therein, and all other such fit and proper works and arrangements as may appear to the vestry or board, or to their officers, requisite to secure the safe and proper working of the said drain, and to prevent the same from obstructing or otherwise injuring or impeding the action of the sewer to which it leads; and it shall be lawful for the said vestry or board to cause the said works to be inspected while in progress, and from time to time during their execution to order such reasonable alterations therein, additions thereto, and abandonment of part or parts thereof, as may to the vestry or board or their officers appear, on the fuller knowledge afforded by the opening of the ground, requisite to secure the complete and perfect working of

(i) This is not an absolute duty, but only one to take reasonable care: *Baleman v. Poplar*, 37 C. D. 272.

(j) See 25 & 26 Vict. c. 102, s. 64, *post*.

(k) As to service of notices, see s. 221.

(l) Does not apply to a new drainage scheme: *Marylebone v. Viret*, 19 C. B. N. S. 424.

Sect. 73. such works; and if the owner of such house or building neglect or refuse, during twenty-eight days after the said notice has been delivered to such owner, or left at such house or building, to begin to construct such drain and other works aforesaid, or any of them, or thereafter fail to carry them on and complete them with all reasonable despatch, it shall be lawful for the vestry or board to cause the same to be constructed and made, and to recover the expenses to be incurred thereby from such owner, in the manner herein-after provided. (*m*)

On default of owner vestry, etc., may do the work, and recover the expense from him.

Provision for combined drainage of blocks of houses.

74. (*n*) If it appear to the vestry or board of any parish or district that a group or block of contiguous houses, or of adjacent detached or semi-detached houses, may be drained and improved more economically or advantageously in combination than separately, and a sewer of sufficient size already exist or be about to be constructed within one hundred feet of any part of such group or block of houses, whether contiguous, detached, or semi-detached, it shall be lawful for such board or vestry to order that such group or block of houses be drained and improved, as herein-before provided, by a combined operation.

75. [No house to be built without drains constructed to the satisfaction of the vestry or district board.] (*o*)

Notice of buildings to be given to the vestry or district board before commencing the same.

76. (*n*) Before beginning to lay (*p*) or dig out the foundation of any new house or building within any such parish or district, or to rebuild any house or building therein, and also before making any drain for the purpose of draining directly or indirectly into any sewer under the jurisdiction of the vestry or board of or for any such parish or district, seven days notice (*q*) in writing shall be given to the vestry or board by the person intending to build or rebuild such house or building, or to make such drain; and every such foundation shall be laid at such level as will permit the drainage of such house or building in compliance with this Act, and as the vestry or board shall order, and every such drain shall be made in such direction, manner, and form, and of such materials and workmanship, and with such branches thereto and other connected works and apparatus and water supply, as herein-before mentioned, and as the vestry or board shall order, and the making of every such drain shall be under the survey and control of the vestry or board; and the vestry or district board shall make their order in relation to the matters aforesaid, and cause the same to be notified to the person from whom such notice was received within seven days (*r*) after the receipt of such notice; and in default of such notice, or if such house, building, or drain, or branches thereto or other connected works and apparatus and water supply, be begun, erected, made, or provided in any respect contrary to any order of the vestry or board made and notified as aforesaid, or the provisions of this Act, it shall be lawful for the vestry or board to cause such house or building to be demolished or altered, (*s*) and to cause such drain or branches thereto and other connected works and apparatus and water supply to be relaid, amended, or re-made, or, in the event of omission, added, as the case may require, and to recover the expenses thereof from the owner thereof, in the manner herein-after provided.

78. Whenever it is necessary to open any part of the pavement, or any

Power to Metropolitan Board or vestry or district board to do the works

(*m*) This does not apply where in consequence of a new sewer a new drain becomes necessary: *St. Martin v. Ward*, 1897, 1 Q. B. 40.

(*n*) See 25 & 26 Viet. c. 102, s. 64, *post*.

(*o*) See *Austin v. St. Mary*, 27 L. J. Ch. 288.

(*p*) Applies to a house without foundations: *The Poplar District Board v.*

Knight, 28 L. J. M. C. 37.

(*q*) Does not apply where persons are acting under statutory authority inconsistent with this enactment: *Surrey Co. v. Bernondsey*, 1904, 1 K. B. 474.

(*r*) See 25 & 26 Viet. c. 102, s. 63, *post*.

(*s*) The owner must have an opportunity of shewing cause. See *Hopkins v. Smethwick*, 24 Q. B. D. 712.

street (t) or public place, for the purpose of making or branching any private drain into any of the sewers or drains vested in the Metropolitan Board of Works or any vestry or district board under this Act, or authorized to be made by them under this Act, it shall be lawful for the vestry or board, in case they think fit so to do, to make so much and such part of such private drain, and also to construct so much and such part of the work necessary for branching the same into the public sewers as shall be under or in any street, and to recover the expenses incurred thereby from the owner of the house, building, or ground to which such private drain belongs, in the manner herein-after provided.

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under any street necessary for branching private drains into sewers, at the expense of the party to whom they belong.

79. It shall be lawful for any such vestry or board to contract and agree with the owners or occupiers of any houses, buildings, or ground, that any drains required to be made, altered, or enlarged by such owners shall be constructed, made, altered, and enlarged by the vestry or board; and the cost price of making, altering, or enlarging such drains, as certified by the surveyor of the vestry or board, shall be repaid by the owner or occupier so agreeing to the vestry or board, and in default of payment the same may be recovered in the manner herein-after provided.

Vestry or district board may agree to make house drains at the expense of owners or occupiers.

80. Where any sewer in any of the parishes mentioned in either of the schedules (A.) and (B.) to this Act, into which any drain shall be made or branched, has been built since the third day of September one thousand eight hundred and thirteen, and before the commencement of this Act, at the expense of any person or body other than any Commissioners of Sewers, the vestry or district board in whom such sewer is vested may order such sum as they may deem just to be paid and contributed by the owner of the house to which such drain belongs towards the expense of the construction of such sewer, which sum shall, on the receipt thereof by such vestry or board, be paid over to the person or body aforesaid, and such vestry or board may, if they see fit, order and accept payment of such sum, with interest after a rate not exceeding five pounds for the hundred by the year, by instalments within any period not exceeding twenty years.

Vestry or district board may order contributions from owners of private houses drained into sewers not constructed by any Commissioners of Sewers towards the expense of the construction of such sewers.

82. (u) It shall be lawful for any such vestry or board, or for their surveyor or inspector, or such other person as they appoint, to inspect any drain, water-closet, privy, cesspool, or water supply apparatus, or sinks, traps, syphons, pipes, or other works or apparatus connected therewith, within the parish or district of such vestry or board, and for that purpose, at all reasonable times in the day-time, after twenty-four hours notice in writing has been given to the occupier of the premises to which such drain, water-closet, privy, cesspool, or water supply apparatus, or other connected works or apparatus as aforesaid, is attached, or left upon the premises, or, in case of emergency, without notice, to enter, by themselves or their surveyor or inspector and workmen, upon any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be.

Power for vestries and district boards to authorize inspection of drains, privies, and cesspools.

83. In case any drain, water-closet, privy, cesspool, or water supply apparatus, or other connected works or apparatus, herein-before mentioned, be found, on inspection, not to have been made or provided according to the directions or regulations of the vestry or district board, or contrary to the provisions of this Act, or in case any person, without the consent of the vestry

Penalty (x) on persons improperly making or altering drains.

(t) This applies to streets and new streets: *Hampstead v. Hooper*, 15 Q. B. D. 652.

relate to a drain or sewer or any work or apparatus connected therewith.

(u) Ss. 82 to 85 repealed by 54 & 55 Vict. c. 76, s. 142, except so far as they

(x) See as to penalties, 25 & 26 Vict. c. 102, s. 65, *post*.

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Where no default found, expenses to be paid by vestry or board.

84. If such drain, watercloset, privy, cesspool, or water supply, or water supply apparatus, or other connected works and apparatus, be found on inspection as aforesaid to be made to the satisfaction of the vestry or board, and in proper order and condition, they shall cause the same to be reinstated and made good as soon as may be; and the expenses of examination, reinstating, and making good such drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid shall be defrayed by the vestry or board, and full compensation shall be made by them for all damages or injuries done or occasioned by the examination of any such drain, watercloset, privy, cesspool, or other works or apparatus as aforesaid.

Vestry or district board to cause drains, etc., to be put into proper condition, etc where necessary.

85. (z) If, upon such inspection as aforesaid, any drain, watercloset, privy, or cesspool appear to be in bad order and condition, or to require cleansing, alteration, or amendment, or to be filled up, the vestry or board shall cause notice in writing to be given to the owner or occupier of the premises upon or in respect of which the inspection was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works; and if such notice be not complied with by the person to whom it is given, the vestry or board may, if they think fit, execute such works, and the expenses incurred by them in so doing shall be paid to them by the owner or occupier of the premises.

Where works interfere with any ancient mill, etc., compensation to be made, or rights therein purchased.

86. . . . Provided also, that where any work by any vestry or district board done or required to be done in pursuance of the provisions of this Act interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, in manner herein-after provided, or it shall be lawful for the vestry or board, if they think fit, to contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water; and the provisions of this Act with respect to the purchases by the

(y) Extended to making sewers contrary to plans approved: 53 & 54 Vict. c. 66, s. 4, and to connections not approved, with local sewers: s. 5. But except as to

main sewers vested in the county council this does not apply within the city: s. 8.

(z) See 25 & 26 Vict. c. 102, s. 64, *post*.

vestry or board herein-after authorized shall be applicable to every such purchase as aforesaid.

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96. Every vestry and district board shall, within their parish or district (exclusively of any other persons whatsoever), execute the office of and be surveyor of highways, and have all such powers, authorities, and duties, and be subject to all such liabilities, (a) as any surveyor of highways in England is now or may hereafter be invested with or liable to by virtue of his office, under the laws for the time being in force, so far as such powers, authorities, duties, and liabilities (b) are not inconsistent with this Act; . . . and all streets being highways, (c) and the pavements, stones, and other materials thereof, (d) and all other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, or by any vestry or district board under this Act, shall vest in and be under the management and control of the vestry or district board of the parish or district in which such highways are situate. (e)

Vestries and district boards shall execute the office of surveyor of highways.

Streets and materials, etc., to vest in vestries and district boards.

98. It shall be lawful for every vestry and district board from time to time to cause all or any of the streets within their parish or district, or any part thereof respectively, to be paved or repaired, when and as often and in such form and manner and with such materials as such vestry or board think fit, and to cause the ground or soil thereof to be raised or lowered, (f) and the course of the channels running in, into, or through the same to be turned or altered, in such manner as they think proper, and to alter the position of any mains or pipes (g) in or under such street, such alteration to be made subject to the approval of the engineer of the company to which such mains or pipes belong.

Vestry or district board to cause streets to be paved, etc.

99. [Owners possessing freehold of courts, etc. to pave the same.]

100. [Owners (h) of courts to drain them, and keep the pavement, etc. in repair.]

101. No vault, arch, or cellar shall be made under any street without the consent of the vestry or district board of the parish or district in which the same is situate; and all such vaults, arches, and cellars hereafter to be made within any parish or district mentioned in either of the schedules (A.) and (B.) to this Act shall be substantially made, and so as not to interfere or communicate with any drain or sewer under the control of any vestry or district board, or of the Metropolitan Board of Works, without their consents respectively first obtained; and if any vault, arch, or cellar be made contrary to this provision, it shall be lawful for the vestry or district board, or for the Metropolitan Board of Works, to fill up or alter the same, and the expenses incurred thereby shall be paid by the owner of such vault, arch, or cellar.

Vaults and cellars under streets not to be made without the consent of the vestry or board.

(a) They are not liable for non-repair: *Parsons v. Vestry of St. Matthew*, L. R. 3 C. P. 56; nor for misfeasance unless they personally interfere: *Holliday v. St. Leonards*, 11 C. B. N. S. 192.

(b) As to liability for defective flap of water meter, see *Blackmore v. Mile End*, 9 Q. B. D. 451.

(c) But only so long as they are highways: *Rolls v. St. George*, 14 Ch. D. 785.

(d) They are not, however, entitled to a mandatory injunction for illegally breaking the street: *St. Mary v. County of London Co.*, 1899, 1 Ch. 474.

(e) By 53 & 54 Vict. c. 66, s. 6, the subsoil under a street etc. is not to be

removed without the consent of the local authority. They can, however, only impose conditions as to the levelling and making a proper foundation: *Wandsworth v. Bird*, 1892, 1 Q. B. 48.

(f) They must first pay compensation: *Bigg v. London*, 15 Eq. 376.

(g) As to damage by steam-roller, see *Gas Light Co. v. St. Mary Abbotts*, 15 Q. B. D. 1. There is no duty to alter the position of pipes when the level is altered: *Southwark v. Wandsworth*, 1898, 2 Ch. 603.

(h) They can only be required to do so once: *Harrison v. New St. Mews*, 1906, 1 K. B. 703.

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Vaults, etc.,
under streets
to be repaired
by owners or
occupiers.

Provisions for
paving new
streets.

Vestry or
board may
declare their
intention of
repairing any
street, not
being a high-
way.

Act not to
authorize the
making any
thoroughfare
without the
consent of the
proprietor of
the estate.

Vestries and
district boards

102. All vaults, arches, and cellars (*i*) made either before or after the commencement of this Act under any street in any parish or district mentioned in either of the schedules (A.) and (B.) to this Act, and all openings into the same in any such street, shall be repaired and kept in proper order by the owners or occupiers of the houses or buildings to which the same respectively belong; and in case any such vault, arch, or cellar be at any time out of repair, it shall be lawful for the vestry or district board of such parish or district to cause the same to be repaired and put into good order, and to recover the expenses thereof from such owner, in the manner herein-after provided.

103. In case the owners (*k*) of the houses forming the greater part of any new street (*l*) laid out or made or hereafter to be laid out or made, which is not paved to the satisfaction of the vestry or district board of the parish or district in which such street is situate, be desirous of having the same paved, as herein-after mentioned, or if such vestry or board deem it necessary or expedient that the same should be so paved, (*m*) then and in either of such cases such vestry or board shall well and sufficiently pave the same, either throughout the whole breadth of the carriageway and footpaths thereof, or any part of such breadth, and from time to time keep such pavement in good and sufficient repair; and the owners of the houses forming such street shall, on demand, pay to such vestry or board the amount of the estimated expenses of providing and laying such pavement (such amount to be determined by the surveyor for the time being of the vestry or board); and in case such estimated expenses exceed the actual expenses of such paving, then the difference between such estimated expenses and such actual expenses shall be repaid by the said vestry or board to the owners of houses by whom the said sum of money has been paid; and in case the said estimated expenses be less than the actual expenses of such paving, then the owners of the said houses shall, on demand, pay to the said vestry or board such further sum of money as, together with the sum already paid, amounts to such actual expenses. (*n*)

106. The vestry or district board of any parish or district may, if they think fit, by notice in writing put up in any part of any street in their parish or district, not being a highway, declare their intention of repairing the same under this Act, and thereupon the same shall be from time to time repaired by them under the authority of this Act. (*o*) . . .

107. Nothing in this Act shall extend or be construed to extend to or authorize the taking down or removing any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street, or way, without the consent of the proprietor of the estate or property upon which such bar, gate, rail, or other fence, square, street, or way shall be situate.

108. It shall be lawful for every vestry and district board from time to time to place any posts, fences, and rails on the sides of any footways or carriageways in their parish or district, for the purposes of safety, and to prevent any carriage

(*i*) *I.e.* cellars which are a complete construction in themselves arched over and with roofs independent of the pavement: *Hamilton v. Vestry of St. George*, L. R. 9 Q. B. 42.

(*k*) See *School Board v. Vestry of St. Mary*, 1 Q. B. D. 65.

(*l*) Includes a street formerly a turnpike road subsequently becoming a street: *Davis v. Greameich*, 1895, 2 Q. B. 219. The street may have only one side: *Simmonds v. Fulham*, 1900, 2 Q. B. 188.

See also *St. Giles v. Crystal Palace Co.*, 1892, 2 Q. B. 33; *Hampstead v. Midland Railway*, 1905, 1 K. B. 538.

(*m*) They must afterwards keep it in repair: *R. v. Hackney*, L. R. 8 Q. B. 528.

(*n*) See *St. Pancras v. Batterbury*, 2 C. B. N. S. 477.

(*o*) By 53 & 54 Vict. c. 66, s. 3, power is conferred on the local authority to repair a road or way not being a street and to recover the expenses from the owners abutting thereon.

or cattle from going on the same, and also to place any posts or other erections in any carriageways, so as to make the crossings thereof less dangerous for foot passengers, and also from time to time to repair and renew any such posts, rails, or fences, or to remove the same, or any other obstruction or encroachment on any carriageway or footway.

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may place fences, etc., to footways.

109. [Notice to be given by companies to vestries and district boards when pavement, etc., is required to be taken up.]

110. Whenever it is necessary, from any cause whatever, for any company or person to break up or open the pavement, surface, or soil of any street, such street, and the pavement, surface, and soil thereof, shall be broken up and opened under the superintendence of the vestry or district board of the parish or district in which the same is situate, and in such manner, and as regards gas companies at such time, as they shall direct; and such company or person shall with all convenient speed complete the work on account of which the same is broken up or opened, and fill in the ground and make good the pavement or surface or soil so broken up or opened, and carry away the rubbish occasioned thereby, and shall in the meantime cause the place where such pavement or surface or soil is so broken up or opened to be fenced and guarded, and shall set up and maintain upon or against the part of the pavement, surface, or soil so broken up or opened a sufficient light during every night that such pavement or surface or soil is continued open or broken up.

Streets not to be broken up, except under the superintendence of vestry or board.

Streets broken up to be reinstated without delay, and to be fenced and lighted at night in the meantime.

111. [Penalty on persons taking up pavements for neglecting to reinstate them, and to place lights during the night-time to prevent accidents.]

112. [Vestry or district board to direct pavements injured by water or gas pipes to be repaired by company.]

114. Provided also, that whenever the permanent surface or soil of any street is broken up or opened, it shall be lawful for the vestry or district board of the parish or district in which the same is situate, in case they think it expedient so to do, to fill in the ground and to make good the pavement or surface or soil so broken up or opened, and to carry away the rubbish occasioned thereby, instead of permitting such work to be done by the company or person by whom such surface or soil is broken up or opened; and the expenses of filling in such ground, and of making good the pavement or soil so broken up or opened, shall be repaid, on demand, to the vestry or board by such company or person.

Power to vestry or district board to reinstate pavement, and charge the expenses to the parties.

115. It shall be lawful for the vestry or district board of any parish or district to contract and agree, for any term of years or otherwise, with the several companies or persons authorized to take up any of the pavements or other formed surface of any of the streets within such parish or district, for the filling in, paving, and restoring of such parts of the said streets as may be from time to time required to be taken up for the purpose of laying, altering, or repairing any pipes, or other like purpose.

Power for vestry or district board to contract with companies authorized to take up pavements for the restoring thereof.

119. [Owners, etc., to remove future projections, on notice from vestry of district board.] (p)

120. It shall be lawful for every vestry and district board, if any projection or obstruction which has been placed or made against or in front of any house or building in any such street before the commencement of this Act shall be an annoyance as aforesaid, to cause the same to be removed or altered as they think fit: Provided always, that the vestry or board shall give notice in writing of such intended removal or alteration to the owner or occupier against or in front of whose house or building such projection or obstruction shall be, seven days

Vestry or district board may remove existing projections, and make compensation for the same.

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before such removal or alteration shall be commenced, and shall make reasonable compensation to every person who shall incur any loss or damage by such removal, excepting in cases where the obstruction or projection may now be removable under any Act, in which case no compensation shall be made.

121. [Hoards to be erected during repairs, and lighted at night where necessary.]

122. [No hoard, etc., to be erected without licence from vestry or district board.]

If hoard be erected or materials be deposited in any manner otherwise than to the satisfaction of the vestry or district board, the same may be removed, and a penalty shall be incurred.

123. If any person erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence from the vestry or district board, or do any such act as aforesaid in any other manner than as permitted by such licence, or continue the same beyond the time stated in such licence, or fail to keep any hoard, fence, platform, or handrail in good repair, he shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during the continuance of such offence; and it shall be lawful for the vestry or board to cause such hoard, fence, scaffold, or inclosure to be pulled down, and the materials thereof, and also all the bricks, mortar, lime, or other building materials, or other matters or things contained within any such inclosure to be removed, and deposited in such place as the vestry or board may think fit, and to be kept until the charges of pulling down and removing the same be paid to the vestry or board; and in case the same be not claimed and the said charges paid within the space of eight days next after such seizure thereof, it shall be lawful for the vestry or board to order the same to be sold, and by and out of the proceeds of such sale to pay such charges, rendering any surplus to the owner or other person by law entitled thereto; and in case the proceeds of such sale be insufficient to cover such charges, and the charges of selling and disposing of such materials, matters, and things, the deficiency shall be repaid by the owner of such materials, matters, and things to the vestry or district board, on demand.

Providing against accidents in laying out new streets, etc.

124. Every person laying out or opening any new street, or building therein, shall, during the operations necessary for forming such new street, or for building therein, take all such precautions for guarding against injury to the passengers along such street as may be directed by the vestry or district board of the parish or district within which such operations are being carried on; and if any person fail to comply with the directions of such vestry or district board within such time as may be limited by them, such vestry or district board may do whatever may be necessary for carrying the same into effect, and the expenses thereby incurred shall be repaid to such vestry or district board by the person laying out or opening such new street or building therein as aforesaid, and shall be recoverable by them from such person in manner provided by this Act.

Vestries and district boards to cause streets to be lighted.

130. Every vestry and district board shall cause the several streets within their parish or district to be well and sufficiently lighted, and for that purpose shall maintain, or set up and maintain, a sufficient number of lamps in every such street, and shall cause the same to be lighted with gas or otherwise, and to continue lighted at and during such times as such vestry or board may think fit, necessary, or proper; and all public lamps, and the lamp posts and lamp irons and fittings thereof, to be provided by any vestry or district board, shall vest in such vestry or board. (g)

(g) By s. 161 the overseers are to collect the rates levied under this Act in the same manner as the poor rate.

Duties and Powers of [County Council]

135. [Main sewers vested in County Council and such council] shall make all such sewers and works and such diversions or alterations of any existing sewers or works vested in them under this act as they may from time to time think necessary for the effectual sewage and drainage of the metropolis and shall discontinue close up or destroy such sewers for the time being vested in them under this act as they may deem unnecessary and . . . shall from time to time repair and maintain the sewers so vested in them and . . . for the purposes aforesaid . . . shall have full power and authority to carry such sewers or works through across or under any turnpike road or any street or place laid out as or intended for a street as well beyond as within the limits of the metropolis or through or under any cellar or vault under the carriageway or pavement of any street and into through or under any lands whatsoever within or beyond the said limits making compensation for any damage done thereby as herein-after provided (r) and all sewers and works from time to time made by [them] shall vest in them and [they] shall cause the sewers vested in them to be constructed covered and kept so as not to be a nuisance or injurious to health and to be properly cleared cleansed and emptied and for the purpose of clearing cleansing and emptying the same they may construct and place either above or underground such reservoirs sluices engines and other works as may be necessary and may cause the sewage and refuse from such sewers to be sold or disposed of as they may see fit but so as not to create a nuisance. (s) . . .

Interpretation

250. In the construction of this Act, . . . the word "owner" shall, (t) "Owner": except for the purpose of the provision of this Act requiring notice to be served on owners or reputed owners of land before application to one of Her Majesty's Principal Secretaries of State for his consent to exercise powers of taking land, or any right or easement in or over land, compulsorily, mean the person for the time being receiving the rackrent of the lands or premises in connexion with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent; (u) the word "street" shall apply to and include any high- "Street": way, and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage; the word "drain" "Drain": shall mean and include any drain of and used for the drainage of one building only, (x) or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any

(r) S. 236.

(s) See also 21 & 22 Vict. c. 104, s. 24: *Price's Co. v. London County Council*, 1908, 2 Ch. 526.

(t) Includes ground landlord: *Holland v. Kensington*, L. R. 2 C. P. 565. See *Driscoll v. Battersea*, 1903, 1 K. B. 881.

(u) See *Hackney v. Lee*, 1904, 2 K. B. 541; *Walford v. Hackney*, 43 W. R. 113;

P.O.

Williams v. Wandsworth, 13 Q. B. D. 211.

(x) If a drain has become a sewer it cannot *seemle* by disconnection again become a drain: *St. Leonard v. Phelan*, 1896, 1 Q. B. 533. See *Kershaw v. Taylor*, 1895, 2 Q. B. 471. But a drain within a curtilage between two blocks of houses of the same owner is a drain: *Pilbroc v. St. Leonard*, 1895, 1 Q. B. 433.

Z

Sect. 250. group or block of houses by a combined operation (*y*) under the order of any vestry or district board; and the word "sewer" shall mean and include sewers and drains (*z*) of every description, except drains to which the word "drain," interpreted as aforesaid, applies.

"Sewer."

By 25 & 26 Vict. c. 102 (the Metropolis Local Management Act, 1862)—

Owners and occupiers of land may execute works of drainage at their own expense, etc.

44. It shall be lawful for the owners or occupiers of any land or premises in any parish, district, or part within the limits of the Metropolis as defined by the firstly recited Act, with the consent and subject to the regulations and conditions herein-after mentioned, to construct sewers at their own expense for the purpose of draining such land or premises; and it shall be lawful for any vestry or district board in whom the sewers in any parish, district, or part are vested, if they shall deem it just and proper so to do, to contribute out of the rates under their control applicable to the execution of works of sewerage to the cost of any sewers constructed for the purpose aforesaid.

47. [Private parties before branching sewers into main or district sewers to apply for sanction of vestries, etc.] (*a*)

48. [Vestries, etc., before sanctioning sewers, to apply for approval of Metropolitan Board.]

49. [Seven days notice must be given, etc., before drains are branched into main sewers.]

50. [Regulations as to abandonment, alteration, etc., of designs for sewers previously approved.]

51. [In case sewer be not constructed within twelve months, fresh application to be made.]

Expense of constructing sewers for new streets and houses erected since 1st Jan. 1856.

52. Where any sewer shall, after the passing of this Act, be constructed by any vestry or district board in or for the drainage of any new street, (*b*) or of any house or houses erected since the first day of January one thousand eight hundred and fifty-six, the expense of constructing such sewer and the works appertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses, shall be borne and defrayed by the owners (*c*) of such street or houses, and of the land bounding or abutting on such street respectively; and the said expenses shall be apportioned (*d*) by the vestry or district board in such proportions as they may deem just; and the amount charged upon or payable in respect of each house or premises shall be payable before the works shall be commenced, during their progress, or after their completion, as the vestry or district board shall in each case determine, either in one sum or by instalments, within such period, not exceeding twenty years, as the vestry or district board shall direct; and any such sum or instalments shall be recoverable from the present or any future

(*y*) Where there was an unauthorized connection from other premises it was held to be a sewer: *Green v. Newington*, 1898, 2 Q. B. 1; but not where there was a mere deviation: *Greater Co. v. Foot*, 1899, 1 Q. B. 972. See *Bateman v. Poplar*, 33 Ch. D. 360.

(*z*) *I.e.* a drain in a covered passage between the houses in an arcade: *St. Martin v. Bird*, 1895, 1 Q. B. 428, and a drain of two or more houses, though one carries away rain water only: *Silles v. Fulham*, 1903, 1 K. B. 829. See *Heaver v.*

Fulham, 1904, 2 K. B. 385.

(*a*) The fact that no such sanction was obtained does not prevent it from becoming a sewer: *Bethnal Green v. London School Board*, 1898, A. C. 190.

(*b*) See *Sawyer v. Paddington*, L. R. 6 Q. B. 164.

(*c*) This does not apply where the authority replace a properly laid sewer with one of their own: *Fulham v. Goodwin*, 1 Ex. D. 400.

(*d*) S. 57 gives an appeal to the county council.

owner of the said house or premises either by action at law or in a summary manner before a justice of the peace, at the option of the vestry or board. **Sect. 52.**

53. Where any sewer shall be constructed by any vestry or district board in a street (e) in which previously to such construction there had been no sewer, or only an open sewer, but where sewers rates have been levied previously to such construction, the expense of constructing such sewer and the works appertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses, shall be borne and defrayed in part only by the owners of the houses situate in and of the land bounding and abutting on such street respectively; and the amount to be borne by such owners shall be determined by the vestry or district board in each particular case; and the residue of such expenses shall be defrayed by the vestry or district board out of the sewers rates levied in their parish or district; and the amount so charged by the vestry or district board upon or in respect of each house or premises shall be payable, either before the works shall be commenced, during their progress, or after their completion, as the vestry or board shall in each case determine, either in one sum or by instalments within such period, (f) not exceeding twenty years, as the vestry or board shall direct; and any such sum or instalment shall be recoverable from the present or any future owner of such house or premises either by action at law or in a summary manner before a justice of the peace, at the option of the vestry or board: Provided, that no street or property in respect of which sewers rates have been levied for five years prior to the first day of January one thousand eight hundred and fifty-six shall be subject to be charged under the provision contained in this section.

Expense of constructing sewers where there had before been no sewers or only open sewers, etc.

54. In apportioning the cost of constructing sewers under the provisions contained in the two last preceding sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, it shall be lawful for any vestry or district board to charge the owners of land bounding or abutting on any street in a less proportion than the owners of house property, should they, under the circumstances of the case, deem it just and expedient so to do.

Land may be charged in a less proportion than house property.

55. In any case in which the estimated expenses shall exceed the actual cost of constructing sewers under the provisions contained in the said two preceding sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, then the difference between such estimated expenses and the actual cost shall be repaid by the vestry or board to the owners of the houses or premises by whom the amount of any such estimated expenses may have been paid; and in any case in which the estimated expenses shall be less than the actual cost of constructing any sewer or sewers under the provisions aforesaid, then the owners of the said houses or premises shall, on demand, pay to the said vestry or board such further sum of money as, together with any sums already paid, will make up the amount of the actual cost; and the vestry or district board shall have all the same remedies for the recovery of such further sum as are herein-before given for recovering any expenses apportioned by vestries or district boards under the said enactments.

Where estimated expenses exceed actual cost, difference to be refunded by, and, where less, to be paid to, vestry, etc.

56. It shall be lawful for the vestry or district board, should they deem it reasonable and just so to do, at their discretion to defray any portion of the expenses of and incident to the construction of sewers under the provisions contained in the said two sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties.

Vestry or district board may defray part of expense out of sewers rates.

(e) Includes new streets: *Vestry of St. John v. Cotton*, 12 A. C. 1. See *Sheffield v. Fulham*, 1 Ex. D. 395. (f) See *Bradley v. Greenwich*, 3 Q. B. D. 384.

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Contribution
to cost of main
sewers and
sewers built
since 1st Jan.
1856, or
hereafter to
be built.

59. The provisions contained in the eightieth section of the firstly-recited Act, (g) empowering vestries and district boards to order, at their discretion, under the circumstances therein mentioned, such sums as they shall deem just to be paid and contributed by the owners of houses towards the expense of the construction of sewers into which drains from such houses shall be made or branched, shall be extended and the same are hereby extended and made applicable to the Metropolitan Board of Works with respect to houses draining into main sewers constructed at the expense of any person or body other than any commissioners of sewers, and which are vested in the Metropolitan Board; and the same provisions are hereby extended and made applicable to all sewers within the limits of the Metropolis as defined by the firstly-recited Act, built since the first day of January one thousand eight hundred and fifty-six, or which may hereafter be built at the expense of any person or body other than the Metropolitan Board of Works, or any vestry, district board, or other body having control over sewers within the Metropolis, into which house drains may be made or branched; and the said Metropolitan Board, vestry, district board, or other body, as the case may be, may at their discretion accept payment of contribution from the owners of houses draining into such sewers respectively, either in one sum or by instalments within any period not exceeding twenty years, with interest after a rate not exceeding five pounds by the hundred by the year, as the said board, vestry, or other body shall in each case determine, and shall on receipt of any such contribution or instalment pay over the same to the person or body entitled thereto; and every sum payable to the said board, vestry, or other body by way of contribution to the construction of sewers shall be recoverable from the present or any future owner of the said premises either by action at law or before a justice of the peace in a summary manner, at the option of the board or vestry: Provided that nothing herein contained shall prejudice or affect the right of vestries and district boards to demand and recover from the owners of houses and land the sums charged upon them by such vestry and district boards respectively under the provisions contained in this Act.

Regulations
respecting
openings into
sewers.

61. No person shall make or branch any sewer or drain, or make any opening into any sewer vested in the Metropolitan Board of Works, or in any vestry or district board, without the previous consent in writing of such board or vestry: (h) Provided, that it shall be lawful for any person, with such consent, at his own expense, to make or branch any drain into any sewer vested in such board or vestry, or authorized to be made by them or either of them under the firstly-recited Act or this Act, such drain being of such size, materials, and other conditions, and branched into such sewer in such manner and form of communication in all respects, as the board or vestry shall direct or appoint: Provided also, that where any contribution to the cost of a sewer is payable in respect of drainage into the same, it shall not be lawful for any person to make or branch any drain into such sewer, except in conformity with the directions of the board or vestry in whom the same shall be vested with respect to payment of contribution under the provisions contained in the firstly-recited Act and this Act in that behalf; and in case any person, without the consent of the said Metropolitan Board, district board, or vestry as aforesaid, make or branch, or cause to be made or branched, any sewer or drain, or make any opening into any of the sewers vested in any such board or vestry, or authorized to be made by them as aforesaid, or if any person make or branch, or cause to be made or

(g) 18 & 19 Vict. c. 120, *sup.*

(h) See *Met. Bd. Works v. L. & N. W. Ry.*, 17 Ch. D. 246; *Islington v. Hornsey*, 1900, 1 Ch. 695. There is no power to

withhold sanction until a sum of money has been paid: *R. v. Greenwich*, 1 C. & E. 236.

branched, any drain of a different construction, size, material, or other conditions, or in another manner or form of communication than shall be directed or appointed by such board or vestry, every person so offending shall for every such offence forfeit a sum not exceeding fifty pounds; and the board or vestry may cut off the connexion between such drain and their sewer, or, if they shall see fit, execute the necessary works for making the said drain conformable to their regulations or directions, at the expense of the person making such drain or causing the same to be made; such expenses to be recovered either by action at law or in a summary manner before a justice of the peace, at the option of the board or vestry.

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63. Whereas by the seventy-sixth section of the firstly-recited Act it is provided that the vestry or district board shall make their order in relation to the matters therein referred to, and cause the same to be notified to the person from whom the notice mentioned in the said section was received, within seven days after the receipt of such notice; and it is expedient that the time for making such order should be extended: Be it therefore enacted, that where any notice shall have been given to any vestry or district board pursuant to the said section, it shall be lawful for the surveyor of such vestry or board, if he shall deem it necessary and proper so to do, within three days after the receipt of such notice by the vestry or district board, by writing under his hand directed to and served upon the person giving such notice, to require that the building or works referred to therein shall not be proceeded with until after the then next meeting of the said vestry or district board, and until their directions in reference thereto shall have been notified to such person, provided that the order of the said vestry or district board shall be made and notified to the said person at the latest within fifteen days after the receipt of such notice by the vestry or district board; and in case any person shall proceed with any building or works contrary to this enactment, he shall forfeit and pay to the vestry or district board a sum not exceeding five pounds, and also a further sum of forty shillings for every day during which such offence shall continue, to be recovered by action at law or in a summary manner at the option of the vestry or board.

Extension of time for making orders by vestries and district board under recited section.

64. Whereas by the seventy-third, seventy-fourth, seventy-sixth, and eighty-fifth sections of the firstly-recited Act, certain works, matters, and things are required to be constructed, made, or executed on the requisition of vestries and district boards by the owners or occupiers of the premises therein referred to; and in case any such owner or occupier refuse or neglect to commence, proceed with, or complete the same, as the case may be, the vestry or district board are authorized to perform and execute such works, matters, and things, and recover the costs incurred thereby in manner therein provided: Be it enacted, that in case of any such neglect or default by any person or persons to comply with the order of any vestry or district board to execute any works, matters, or things under any of the said provisions, the person or persons so offending shall forfeit and pay to the vestry or district board a sum not exceeding five pounds, and also a further sum not exceeding forty shillings for every day during which such offence shall continue, to be recovered by action at law or before a justice of the peace in a summary manner, at the option of the vestry or district board; and the vestry or district board may at their discretion either execute or perform any such works, matters, or things, and recover the costs and expenses thereof from the owner of the property as aforesaid, or proceed for and recover the said penalty or penalties; but nothing herein contained shall render any person or persons liable to be proceeded against for the penalty as well as for the costs and expenses of the works. (c)

Penalty where parties neglect to carry out works pursuant to order of vestry, etc.

(c) As to the power of county council to stop up carriage or footways during the execution of works, see s. 21.

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Penalties in
18 & 19 Vict.
c. 120, ex-
tended to
persons caus-
ing commission
of offences.

Temporary
provision for
drainage of
property where
no proper
sewer within
200 feet.

65. The penalties declared by the firstly-recited Act in the case of persons committing the offences mentioned therein are hereby extended and made applicable to all persons causing the commission of any such offences, or by whose order or direction any such offences shall have been committed.

66. Whereas certain property within the limits of the Metropolis is so situate as to render it impracticable, or practicable only at undue expense, to connect such property with covered sewers; and it is expedient that some temporary provision should be made for draining such property and abating the nuisances existing thereon or caused thereby: Be it therefore enacted, that in any case in which any house or other building, whether erected before or after the passing of this Act, is without sufficient drainage, and there is no proper sewer within two hundred feet of any part of such house or building, it shall be lawful for the vestry or district board of the parish or district in which such house or building is situate by notice in writing to require the owner of such house or building to construct and lay from such house or building a covered drain to lead therefrom into a covered water-tight cesspool or tank or other suitable receptacle, not being under a house or within such distance from a house as the vestry or board shall direct, and to construct such cesspool, tank, or receptacle; and the several provisions in the firstly-recited Act, (k) with respect to the laying of house drains at the expense of the owners of property, and the recovery of such expenses of and the penalties for any omission in respect to the performance of any such works pursuant to the orders of vestries or district boards in accordance with the directions of the said Act, shall be extended to and apply to the making of such cesspools, tanks, receptacles, and drains, and the orders of vestries and district boards in relation thereto and the expenses thereof.

Penalty on
persons placing
buildings or
encroachments
on sewers.

68. Every person who shall knowingly erect or place any building, wall, bridge, fence, obstruction, annoyance, or encroachment in, upon, over, or under any sewer under the jurisdiction of the Metropolitan Board of Works, or of any vestry or district board, and every person obstructing, filling in, or diverting any sewer or drain under the jurisdiction, survey, or control of the Metropolitan Board, or of any vestry or district board, without the previous consent in writing of the board or vestry in whom the same may be vested, shall, in addition to any other proceeding to which he may be liable therefor, forfeit and pay to such respective board or vestry a sum not exceeding twenty pounds for every such offence; and the board or vestry may demolish and remove any such building, wall, bridge, fence, obstruction, annoyance, or encroachment, and perform any works necessary for restoring or reinstating the sewer or other work or thing damaged; and the party erecting such building, wall, bridge, fence, or causing such obstruction, annoyance, or encroachment, shall also pay the expense of removing and abating them respectively, and of re-opening, restoring, repairing, or reinstating any sewer or drain obstructed, filled in, closed up, or diverted; and in case of a continuing offence in any of the cases aforesaid the offender shall be liable to a further penalty, not exceeding five pounds, for each day after notice thereof from the Metropolitan Board of Works, or from the vestry or district board, to be recovered by action at law or before any justice of the peace by a summary proceeding, at the option of the board or vestry: Provided always, that nothing herein contained shall extend to prevent or impede the maintenance, repair, or renewal of any buildings or works under which a sewer or drain has been constructed, but so, nevertheless, that such buildings or works shall not injure or obstruct the said sewer or drain.

69. Any person who shall take up, remove, demolish, or otherwise interfere

(k) See 18 & 19 Vict. c. 120, s. 73, *et seq. ante*.

with any sewer or part of a sewer vested in the Metropolitan Board of Works, or in any vestry or district board, without the previous permission in writing of such board or vestry, or who shall wilfully damage any sewer, bank, defence, wall, penstock, grating, gully, side entrance, tide valve, flap, work, or thing vested in the Metropolitan Board or any vestry or district board, or do any act by which the drainage of the Metropolis or any part thereof may be obstructed or injured, shall for every such offence forfeit and pay to the said Metropolitan Board of Works, or to the vestry or district board aggrieved by any such act, for every such offence a sum not exceeding twenty pounds, and shall also pay to such board or vestry all the expenses of repairing, restoring, reinstating, or amending any sewer or other work or thing so taken up, removed, demolished, damaged, or interfered with, to be recovered by action at law or before a justice of the peace by a summary proceeding, at the option of the board or vestry.

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Penalty on persons interfering with sewers.

17. Where any vestry or district board shall, under the powers given by the one hundred and fifth section of the firstly-recited Act, have paved or be about to pave any new street, (l) the owner (m) of the land bounding (n) or abutting (o) on such street shall be liable to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses (p) therein; provided that it shall be lawful for the vestry or district board to charge the owners (q) of land in a less proportion than the owners of house property, should they deem it just and expedient so to do; and any such costs or expenses, including the cost of paving at the points of intersection of streets, and all other incidental costs and charges, shall be apportioned (r) by the vestry or board, (s) and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion; and it shall be lawful for the vestry or district board at their discretion to accept payment of the amount apportioned or charged in respect of each house or premises by instalments spread over a period not exceeding twenty years; and any such amount shall be recoverable from the present or any future owner of the premises either by action at law (t) or in a summary manner before a justice of the peace, at the option of the vestry or board. (u)

Expenses of new streets.

(l) Where a new street became such after the houses were erected the owners were held liable: *Allen v. Fulham*, 1899, 1 Q. B. 681. The mere fact that it had not previously to the Act been taken over by the highway authority is not sufficient to constitute it a new street: *Arter v. Hammersmith*, 1897, 1 Q. B. 646.

(m) Includes a future owner: *Bermolsey v. Ramsey*, L. R. 6 C. P. 247, and a mortgagee in possession: *Plumstead v. Ingoldby*, L. R. 8 Ex. 174.

(n) Includes the soil of private roads leading out of a new street: *Pound v. Plumstead*, L. R. 7 Q. B. 183, and railway arches and embankments: *Higgins v. Harding*, L. R. 8 Q. B. 7. See *Dryden v. Putney*, 1 Ex. D. 223; *London B. & S. C. Ry. v. St. Giles*, 4 Ex. D. 239; *G. E. Ry. v. Hockney*, 8 A. C. 687; *Hampstead v. Mid. Ry.*, 1905, 1 K. B. 538.

(o) This section does not apply where roads have been irrevocably dedicated: *Plumstead v. British Land Co.*, L. R. 10 Q. B. 203.

(p) Does not extend to a church: *Angell v. Paddington*, L. R. 3 Q. B. 714. Cf. *Wright v. Ingil*, 16 Q. B. D. 379.

(q) A cemetery company is an owner: *St. Giles v. London Cemetery Co.*, 1894, 1 Q. B. 699.

(r) There cannot be apportionments in blocks when the whole road is repaired: *Whitchurch v. Fulham*, L. R. 1 Q. B. 233. The apportionment must be *bona fide* and ought *semble* to specify the properties to be charged: *Elsdon v. Hampstead*, 1905, 2 Ch. 633.

(s) Where one side only is paved the owners on both sides are liable: *Vestry of Mile End v. Whitechapel*, 1 Q. B. D. 680, except where an old street repairable by the inhabitants is widened on one side: *Property Ld. v. Wandsworth*, 1902, 2 K. B. 61.

(t) The statute of limitations does not begin to run until demand: *Hampstead v. Cant*, 1903, 2 K. B. 1.

(u) By 53 & 54 Vict. c. 54, s. 1, the local authority may flag footpaths and recover expenses from the owners. When once flagged to be kept in repair by the authority: s. 3. The owners on both sides are liable: *Paddington v. N. Met. Ry.*, 1894, 1 Q. B. 633. See *Islington v. Cobbett*, 1895, 1 Q. B. 369. By 53 & 54

Sect. 80.

Notice of intention to repair street, not being a highway.

80. No street not being a highway shall be repaired as in the said section (x) mentioned, unless notice be given to the owners and rated occupiers of the houses in such street respectively; and service of any such notice may be effected by leaving the same at the several houses in such street, or where any of the said houses shall be unoccupied, by affixing the same upon the outer door or some conspicuous part of such houses; and provided further, that no such street shall be repaired as in the said section mentioned if within one month after notice has been given as aforesaid written notice of objection to such repair, signed by at least two-thirds of the owners or rated occupiers of houses in the said street, shall be given to the vestry or district board.

Where owners of courts, etc., omit to drain and pave, vestry or district board may perform the works, charging expenses to owner.

81. In any case of default by the owner of any court, passage, or public place not being a thoroughfare, to comply with the requisition of any vestry or district board to perform works of paving or draining of the nature described in the one hundredth section of the firstly-recited Act, it shall be lawful for the vestry or board, should they see fit, in lieu of enforcing the penalty therein mentioned, to execute and perform such works, and recover the expenses thereof from the owner either by action at law or in a summary manner before a justice, at the option of the vestry or board.

Reinstatement of pavement broken up by works of companies, etc.

82. In every case in which any company or person shall be liable under the firstly-recited Act to reinstate the pavement, surface, or soil of any street under the control of any vestry or district board which may have been broken up or opened, or to repay to such vestry or board the expenses of reinstating the pavement, surface, or soil of any street, every such company or person shall be liable to reinstate the pavement, surface, or soil, or to pay the expenses of reinstating the pavement, surface, or soil of such parts of the street as shall have been so broken up or opened, as well as of the part or parts contiguous thereto which may be affected by the works of such company or person, to the reasonable satisfaction of the surveyor for the time being of the vestry or district having control over the pavements in such parish or district.

Vestries, etc., may stop up streets during execution of works.

84. It shall be lawful for any vestry or district board to close or stop up any street within their parish or district, during the execution of any paving, sewerage, or other works by such vestry or board in such street, and to keep the same closed and stopped up for such time as shall be necessary in that behalf.

Vestry or district board may require payment of costs or expenses from either owner or occupier; and occupier paying may deduct from rent.

96. (y) It shall be lawful for any vestry or district board, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said recited Act or this Act either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorized by the recited Act and this Act; and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier shall be required to pay any further sum than the amount

Vict. c. 66, s. 3, they may from time to time execute any necessary works of repair upon any or any part of any carriage road within their parish or district which shall have been used for not less than six months for public traffic, and which may not at the time of such repair have become repairable by them without prejudice to their right to apportion and recover the expenses of paving when the same shall be paved as a new street. The expenses

of such repair to be recoverable as if they were expenses of paving a new street. See *Stroud v. Wandsworth*, 1894, 2 Q. B. 1. A railway company not having access is not liable, and their share is to be paid by the local authority.

(x) 18 & 19 Vict. c. 120, s. 106.

(y) By s. 90 a penalty is imposed for affixing bills to lamp-posts etc. or defacing notice boards belonging to the council.

of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the vestry or district board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, of which has since accrued, shall lie upon such occupier: Provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner and occupier of any house, building, or other property, whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant.

Sect. 96.

Agreements
between land-
lord and tenant
not to be
affected.

112. In the construction of the recited Acts and this Act the word "drain" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-recited Act, and also any drain for draining a group or block of houses by a combined operation, laid or constructed before the first day of January one thousand eight hundred and fifty-six, pursuant to the order or direction or with the sanction or approval of the Metropolitan Commissioners of Sewers; the expression "water company" shall mean and include any of the companies enumerated in the twenty-ninth section of the Act of the session of the fifteenth and sixteenth years of the reign of Queen Victoria, chapter eighty-four, for the making better provision respecting the supply of water to the Metropolis, and also any other company, board, or commission, association, person, or partnership, corporate or unincorporate, for the time being supplying the Metropolis or any part thereof with water for domestic use; the word "cattle" shall include sheep, lambs, and swine; the word "street" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-recited Act, and also any mews and a part thereof; the expression "new street" shall apply to and include all streets hereafter to be formed or laid out, (z) and a part of any such street, and also all streets, the maintenance of the paving and roadway whereof had not, previously to the passing of this Act, been taken into charge and assumed by the commissioners, trustees, surveyors, or other authorities having control of the pavements or highways in the parish or place in which such streets are situate, and a part of any such street, and also all streets partly formed or laid out; the word "pave" shall apply to and include the formation of the roadway or footway of any street; the word "surveyor" shall include any officer called or to be called "engineer"; the word "print" shall apply to and include every mode of taking impressions, whether by letter press, stereotype, lithography, or otherwise. (a)

Interpretation
of terms.

The following are the material provisions of the Public Health (London) Act, 1891, 54 & 55 Vict. c. 76:—

Public Health,
London.

1. It shall be the duty of every sanitary authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances

Sanitary
authority to
inspect dis-
trict for
detection of
nuisances.

(z) See *Vestry of St. Mary v. Barrett*, L. R. 9 Q. B. 278; *Wilson v. St. Giles*, 1892, 1 Q. B. 1.

(a) By 53 & 54 Vict. c. 54, s. 4, the

term "flag" or "flagging" shall include asphalt or other similar paving material, and the term "paved" shall include asphalted or other similar paved work.

Sect. 1. exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act for the purpose of abating the same, and otherwise to put in force the powers vested in them relating to public health and local government, so as to secure the proper sanitary condition of all premises within their district.

*Nuisances
(General).*

What
nuisances
may be
abated
summarily.

Nuisances (General)

2. (1.) For the purposes of this Act,—

- (a.) Any premises in such a state as to be a nuisance or injurious or dangerous to health;
- (b.) Any pool, ditch, gutter, watercourse, cistern, watercloset, earth closet, privy, urinal, cesspool, drain, dung-pit, or ashpit so foul or in such a state as to be a nuisance or injurious or dangerous to health;
- (c.) Any animal kept in such place or manner as to be a nuisance or injurious or dangerous to health;
- (d.) Any accumulation or deposit which is a nuisance or injurious or dangerous to health;
- (e.) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family;
- (f.) Any such absence from premises of water fittings as is a nuisance by virtue of section thirty-three (b) of the Metropolis Water Act, 1871; and
- (g.) Any factory, workshop, or workplace which is not a factory subject to the provisions of the Factory and Workshop Act, 1878, (c) relating to cleanliness, ventilation, and overcrowding, and
 - (i.) is not kept in a cleanly state and free from effluvia arising from any drain, privy, earth closet, watercloset, urinal, or other nuisance, or
 - (ii.) is not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or
 - (iii.) is so overcrowded while work is carried on as to be injurious or dangerous to the health of those employed therein.

shall be nuisances liable to be dealt with summarily under this Act.

(2.) Provided that—

- (i.) Any accumulation or deposit necessary for the effectual carrying on of any business or manufacture shall not be punishable as a nuisance under this section, if it is proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means has been taken for preventing injury thereby to the public health; and
- (ii.) In considering whether any dwelling-house or part of a dwelling-house

(b) This section deals with absence of the prescribed fittings after the prescribed time. By s. 3 prescribed shall mean prescribed by any regulations made under the authority of this Act, and fittings includes communication pipes and also all

pipes cocks cisterns or other apparatus used or intended for supply of water by a company to a consumer and for that purpose placed in or about the premises of the consumer.

(c) See now 1 Ed. VII. c. 22.

which is used also as a factory, workshop, or workplace, or whether any factory, workshop, or workplace used also as a dwelling-house, is a nuisance by reason of overcrowding, the court shall have regard to the circumstance of such other user.

4. (1.) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act the sanitary authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found, on the occupier or owner of the premises on which the nuisance arises, requiring him to abate the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, and, if the sanitary authority think it desirable (but not otherwise) specifying any works to be executed. (d)

(2.) The sanitary authority may also by the same or another notice served on such occupier, owner, or person require him to do what is necessary for preventing the recurrence of the nuisance, and, if they think it desirable, specify any works to be executed for that purpose, and may serve that notice notwithstanding that the nuisance may for the time have been abated, if the sanitary authority consider that it is likely to recur on the same premises.

(3.) Provided that—

(a.) where the nuisance arises from any want or defect of a structural character, or where the premises are unoccupied, the notice shall be served on the owner :

(b.) where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the occupier or owner of the premises, the sanitary authority may themselves abate the same and may do what is necessary to prevent the recurrence thereof :

(c.) where the medical officer of health certifies to the sanitary authority that any house or part of a house in their district is so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family, the sanitary authority shall take proceedings under this section for the abatement of such nuisance :

(d.) where the nuisance is such absence of water-fittings as is declared a nuisance by section thirty-three (e) of the Metropolis Water Act, 34 & 35 Vict. 1871, such absence shall be deemed to render the premises unfit for human habitation unless and until the contrary is shown to the satisfaction of the court. c. 113.

5. [On non-compliance with notice, order to be made by petty sessional court.]

(9.) If a person fails to comply with the provisions of a nuisance order with respect to the abatement of a nuisance, he shall, unless he satisfies the court that he has used all due diligence to carry out such order, be liable to a fine not exceeding twenty shillings a day during his default; and if a person knowingly and wilfully acts contrary to a prohibition or closing order he shall be liable to a fine not exceeding forty shillings a day during such contrary action; moreover the sanitary authority may enter the premises to which a nuisance order relates,

(d) Where acting on such a notice the person does work which the local authority were legally compellable to do the expense may be recovered as money paid at the authority's request: *Andrew v. St. Olaves*,

1898, 1 Q. B. 775; *Wilson's Co. v. Finsbury*, 1908, 1 K. B. 563. See the cases cited, *ante*, p. 287.

(e) See *sup.*, s. 2.

Sect. 5. and abate or remove the nuisance, and do whatever may be necessary in execution of such order.

Provision as
to appeal
against order.

6. (1.) Where a person appeals to the court of quarter sessions against a nuisance order, no liability to a fine shall arise, nor, save as in this section mentioned, shall any proceedings be taken or work done under such order until after the determination or abandonment of such appeal.

(2.) There shall be no appeal to quarter sessions against a nuisance order, unless it is or includes a prohibition or closing order, or requires the execution of structural works.

(4.) Where a nuisance order is made on any person and appealed against, and the court which made the order is of opinion that the continuance of the nuisance will be injurious or dangerous to health, and that the immediate abatement thereof will not cause any injury which cannot be compensated by damages, the court may authorize the sanitary authority immediately to abate the nuisance; but the sanitary authority, if they do so, and the appeal is successful, shall pay the cost of such abatement and the damages (if any) sustained by the said person by reason of such abatement; but, if the appeal is dismissed or abandoned, the sanitary authority may recover the cost of the abatement in a summary manner from the said person.

7. [In case of two convictions for overcrowding, court may order premises to be closed.]

8. [In certain cases order may be addressed to sanitary authority.]

Power to sell
manure, etc.

9. Any matter or thing removed by the sanitary authority in abating, or doing what is necessary to prevent the recurrence of, a nuisance liable to be dealt with summarily under this Act may be sold by public auction or, if the authority think the circumstances of the case require it, may be sold otherwise, or be disposed of without sale; and the money arising from the sale may be retained by the sanitary authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Power of
entry.

10. The sanitary authority shall have a right to enter from time to time any premises—

(a.) for the purpose of examining as to the existence thereon of any nuisance liable to be dealt with summarily under this Act, at any hour by day, or in the case of a nuisance arising in respect of any business, then at any hour when that business is in progress or is usually carried on, and

(b.) where under this Act a nuisance has been ascertained to exist, or a nuisance order has been made, then at any such hour as aforesaid, until the nuisance is abated, or the works ordered to be done are completed, or the closing order is cancelled, as the case may be, and

(c.) where a nuisance order has not been complied with, or has been infringed, at all reasonable hours, including all hours during which business therein is in progress or is usually carried on, for the purpose of executing the order.

11. [Costs of execution of provisions relating to nuisances recoverable summarily or in the county court or high court.]

Power to
proceed where
cause of
nuisance
arises with-
out district.

14. (1.) Where a nuisance liable to be dealt with summarily under this Act appears to be wholly or partially caused by some act, default, or sufferance committed or taking place without the district the inhabitants of which are affected by the nuisance, the sanitary authority for that district may take or cause to be taken against any person in respect of such act, default, or sufferance any proceedings in relation to nuisances by this Act authorized, with the same

incidents and consequences as if such act, default, or sufferance were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act, default, or sufferance is alleged to be committed or take place.

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(2.) Section one hundred and eight of the Public Health Act, 1875, (*f*) shall continue to extend to London, with the substitution of a sanitary authority under this Act for any nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the metropolis shall include a nuisance within the meaning of this Act. c. 55.

Penalties in respect of particular Nuisances

Penalties in respect of particular Nuisances.

16. (1.) Every sanitary authority shall make byelaws—

- (a.) for the prevention of nuisances arising from any snow, ice, salt, dust, ashes, rubbish, offal, carrion, fish, or filth, or other matter or thing in any street; and
- (b.) for preventing nuisances arising from any offensive matter running out of any manufactory, brewery, slaughter-house, knackers' yard, butcher's or fishmonger's shop, or dunghill, into any uncovered place, whether or not surrounded by a wall or fence; and
- (c.) for the prevention of the keeping of animals on any premises in such place or manner as to be a nuisance or injurious or dangerous to health; and
- (d.) as to the paving of yards and open spaces in connexion with dwelling-houses.

Byelaws by sanitary authority and county council as to cleansing streets and nuisances.

(2.) The county council shall make bye-laws—

- (a.) for prescribing the times for the removal or carriage by road or water of any fecal or offensive or noxious matter or liquid in or through London, and providing that the carriage or vessel used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid, and as to prevent any nuisance arising therefrom; and
- (b.) as to the closing and filling up of cesspools and privies, and as to the removal and disposal of refuse, and as to the duties of the occupier of any premises in connexion with house refuse, so as to facilitate the removal of it by the scavengers of the sanitary authority.

(3.) It shall be the duty of every sanitary authority to observe and enforce any byelaws made under this section.

(4.) Except as otherwise provided by the byelaws, a constable may arrest without warrant and take before a justice any person whom he finds committing an offence against such byelaws and who refuses to give his true name and address.

(5.) Provided that the byelaws shall not make it an offence to lay sand or other material in any street in time of frost to prevent accidents, or litter or other matter to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the same is laid, and when the occasion ceases duly removed, in accordance with the byelaws.

17. (1.) A person shall not—

- (a.) feed or keep any swine in any locality, premises, or place which is unfit for the keeping of swine, or in which the feeding or keeping of swine may create a nuisance or be injurious to health, or

Penalty for keeping swine in unfit place.

(*f*) *Ante*, p. 290.

Sect. 17.

(b.) permit any swine to stray or go about in any street or public place.

(2.) If any person acts in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to forfeit the swine, and to a further fine not exceeding ten shillings for every day during which he continues such offence after notice from the sanitary authority to discontinue the same.

(3.) Any swine found straying or going about in any street or public place may be seized and removed by any constable.

(4.) Any premises within forty yards of any street or public place shall be deemed for the purposes of this section to be a place unfit for keeping swine.

*Offensive Trades**Offensive Trades.*

20. (7.) The sanitary authority shall have a right to enter any slaughter-house or knacker's yard at any hour by day or at any hour when business is in progress or is usually carried on therein, for the purpose of examining whether there is any contravention therein of this Act or of any byelaw made thereunder.

(8.) Nothing in this section shall extend to slaughter-houses erected before or after the commencement of this Act in the Metropolitan Cattle Market under the authority of the Metropolitan Market Acts, 1851, or 1857.

21. [Duty of sanitary authority to complain to justice of nuisance arising from offensive trade.]

*Smoke Consumption**Smoke Consumption.*

23. [Furnaces and steam vessels to consume their own smoke.]

(6.) The provisions of this Act with respect to the admission of the sanitary authority into any premises for any purposes in relation to nuisances, (g) and with respect to the giving of information of a nuisance, shall apply in like manner as if they were herein re-enacted, and in terms made applicable to this section.

(7.) This section shall extend to the port of London, and as respects the port shall be enforced by the port sanitary authority.

(8.) Nothing in this section shall alter or repeal any of the provisions of the City of London Sewers Act, 1851, (h) or of the Whitechapel Improvement Act, 1853.

24.—

(a.) Any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever; and

(b.) Any chimney (i) (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance; shall be nuisances liable to be dealt with summarily under this Act, and the provisions of this Act relating to those nuisances shall apply accordingly:

Provided that the court, hearing a complaint against a person in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, shall hold that no nuisance is created, and dismiss the complaint, if satisfied that such fireplace

(g) See s. 10.

(h) This reference is probably to 14 & 15 Vict. c. 91.

(i) Includes the funnel of a steam-tug:

Tough v. Hopkins, 1904, 1 K. B. 804. The owner is liable: *Barnes v. Akroyd*, L. R. 7 Q. B. 474.

14 & 15 Vict.
c. 75.

16 & 17 Vict.
c. 141.

Summary
proceedings
for abate-
ment of
nuisance.

or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof. Sect. 24.

Workshops and Bakehouses

*Workshops
and Bake-
houses.*

25. (1.) Where, on the certificate of a medical officer of health or sanitary inspector, it appears to any sanitary authority that the limewashing, cleansing, or purifying of any workshop (other than a bakehouse), or of any part thereof, is necessary for the health of the persons employed therein, the sanitary authority shall serve notice in writing on the owner or occupier of the workshop to limewash, cleanse, or purify the workshop or part as the case requires, within the time specified in the notice; and, if the person on whom notice is so served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding ten shillings for every day during which he continues to make default after conviction; and the sanitary authority may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person on whom the notice was served. Limewash-
ing and
washing of
workshops.

(2.) This section shall apply to any factory which is not subject to the provisions of the Factory and Workshop Act, 1878, and the Acts amending the same, and to any workplace, in like manner as it applies to a workshop.

26. (1.) Sections thirty-four, thirty-five, and eighty-one of the Factory and Workshop Act, 1878, and sections fifteen and sixteen of the Factory and Workshop Act Amendment Act, 1883 (which relate to cleanliness, ventilation, and other sanitary conditions), shall, as respects every bakehouse which is a workshop, be enforced by the sanitary authority of the district in which the bakehouse is situate, and they shall be the local authority within the meaning of those sections. (f) Enactments
respecting
bakehouses.

(2.) For the purposes of this section, the provisions of this Act with respect to the admission of the sanitary authority and their officers into any premises for any purpose in relation to nuisances shall apply in like manner as if they were herein re-enacted and in terms made applicable to this section; and every person refusing or failing to allow the sanitary authority or their officer to enter any premises in pursuance of those provisions for the purposes of this section shall be subject to a fine.

Dairies

Dairies.

28. (1.) The Local Government Board may make such general or special orders as they think fit for the following purposes, or any of them, that is to say,— Orders and
regulations
for dairies.

- (a.) for the registration with the county council of all persons carrying on the trade of dairymen;
- (b.) for the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies in the occupation of persons carrying on the trade of dairymen;
- (c.) for securing the cleanliness of milk-vessels used for containing milk for sale by such persons;
- (d.) for prescribing precautions to be taken for protecting milk against infection or contamination;

(f) See now 1 Ed. VII. c. 22, ss. 99, 100, 135, 97 and 98 respectively.

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(e.) for authorizing the county council to make byelaws for the purposes aforesaid, or any of them.

(2.) The county council for the purpose of enforcing the said orders and any byelaws made thereunder shall have the same right to be admitted to any premises as a sanitary authority have under this Act for the purpose of examining as to the existence of a nuisance liable to be dealt with summarily, and the provisions of this Act shall apply accordingly as if they were herein re-enacted and in terms made applicable to this section, and in particular with the substitution of the county council for the sanitary authority.

(3.) The Local Government Board may by any such order impose the like fines for offences against orders made under this section as may be imposed for offences against the byelaws of a sanitary authority under this Act.

(4.) In the application of this section to the City of London, the mayor, commonalty, and citizens of the city acting by the council shall be substituted for the county council, . . .

*Removal of Refuse**Removal of Refuse.*

30. (1.) It shall be the duty of every sanitary authority—

(a.) to secure the due removal at proper periods of house refuse from premises, (k) and the due cleansing out and emptying at proper periods of ashpits, and of earth closets, privies, and cesspools (if any), in their district, and the giving of sufficient notice of the times appointed for such removal, cleansing out, and emptying, and

(b.) where the house refuse is not removed from any premises in the district at the ordinary period, or any ashpit, earth-closet, privy, or cesspool in or under any building in the district is not cleansed out or emptied at the ordinary period, and the occupier of the premises serves on the authority a written notice requiring the removal of such refuse, or the cleansing out and emptying of the ashpit, earth-closet, privy, or cesspool, as the case may be, to comply with such notice within forty-eight hours after that service, exclusive of Sundays and public holidays.

(2.) If a sanitary authority fail without reasonable cause to comply with this section, they shall be liable to a fine not exceeding twenty pounds. (l)

(3.) If any person in the employ of the sanitary authority, or of any contractor with the sanitary authority, demands from an occupier or his servant any fee or gratuity for removing any house refuse from any premises, he shall be liable to a fine not exceeding twenty shillings.

Disposal of refuse.

32. All street refuse and house refuse collected by or on behalf of a sanitary authority shall be the property of that authority, and the authority shall have full power to sell and dispose of the same for the purposes of this Act as they may think proper, and the person purchasing the same shall have full power to take, carry away, and dispose of the same for his own use, and the money arising from the sale thereof shall be applied toward defraying the expenses of the execution of this Act.

Owners, etc., to pay for removal of refuse of trades.

33. (1.) If the sanitary authority are required by the owner or occupier of any premises to remove any trade refuse, that authority shall do so, and the owner or occupier shall pay to that authority a reasonable sum for such removal,

(k) An occupier cannot *semble* be required to put the refuse in a receptacle on the kerbstone: *Wandsworth v. Buines*, 1906, 1 K. B. 470.

(l) This section negatives a right of action in a person who has suffered damage by the default. See *Saunders v. Holborn*, 1895, 1 Q. B. 64.

and such sum, in case of dispute, shall be settled by the order of a petty sessional court. Sect. 33.

(2.) If any dispute or difference of opinion arises between the owner or occupier and the sanitary authority as to what is to be considered as trade refuse, a petty sessional court, on complaint made by either party, may by order determine whether the subject matter of dispute is or is not trade refuse, and the decision of that court shall be final. (*m*)

34. (1.) If the sanitary authority, or any persons employed by them, neglect for the space of seven days to remove all such house refuse as they are required by or in pursuance of this Act to remove, then an occupier of premises (after twenty-four hours' notice given by him to the sanitary authority requiring them to remove the same), may without prejudice to any other proceeding under this Act give away or sell his house refuse; and any person who in pursuance of such gift or sale removes the said house refuse shall not be liable to any fine for so doing. Provision on neglect of scavengers to remove dust.

(2.) Save as aforesaid, if any person other than the sanitary authority or their contractors or servants receives, carries away, or collects any house refuse or street refuse from any premises or street, such person shall be liable to a fine not exceeding five pounds.

35. (1.) Where it appears to a sanitary inspector that any accumulation of any obnoxious matter, whether manure, dung, soil, filth, or other matter, ought to be removed, and it is not the duty of the sanitary authority to remove the same, he shall serve notice on the owner thereof, or on the occupier of the premises on which it exists, requiring him to remove the same, and if the notice is not complied with within forty-eight hours from the service thereof, exclusive of Sundays and public holidays, the matter referred to shall be the property of the sanitary authority, and be removed and disposed of by them, and the proceeds (if any) of such disposal shall be applied in payment of the expenses incurred with reference to the matter removed, and the surplus (if any) shall be paid on demand to the former owner of the matter. Removal of filth on requisition of sanitary inspector.

(2.) The expenses of such removal and disposal, so far as not covered by such proceeds, may be recovered by the sanitary authority in a summary manner from the former owner of the matter removed, or from the occupier, or, where there is no occupier, the owner, of the premises. (*n*)

36. (1.) The sanitary authority, if they think fit, may employ a sufficient number of scavengers, or contract with any scavengers, whether a company or individuals, for collecting and removing the manure and other refuse matter from any stables and cowhouses within their district, the occupiers of which signify their consent in writing to such removal; provided that— Removal of refuse from stables, cow-houses, etc.

(a.) such consent shall not be withdrawn or revoked without one month's previous notice to the sanitary authority, and

(b.) no person shall be hereby relieved from any fine to which he may be subject for placing dung or manure upon any footways or carriage-ways, or for having any accumulation or deposit of manure or other refuse matter so as to be a nuisance or injurious or dangerous to health.

(2.) Notice may be given by a sanitary authority (by public announcement in the district or otherwise) requiring the periodical removal of manure or other

(*m*) See *Snunders v. Holborn*, 1895, 1 Q. B. 64; *Holborn v. St. Leonard*, 2 Q. B. D. 145; *Gay v. Culby*, L. R. 2 C. P. D. 391; *St. Martin's v. Gordon*, 1891, 1 Q. B. 61; *Westminster v. Gordon*, 1907, 1 K. B. 910.

(*n*) The local authority may institute proceedings notwithstanding their right to abate: *Att.-Gen. v. Tod-Heutley*, 1897, 1 Ch. 560.

Sect. 36. refuse matter from stables, cowhouses, or other premises; and, where any such notice has been given, if any person to whom the manure or other refuse matter belongs fails to comply with the notice, he shall be liable without further notice to a fine not exceeding twenty shillings for each day during which such non-compliance continues.

*Regulations
as to Water-
closets, etc.*

Obligation
to provide
waterclosets,
etc.

Regulations as to Waterclosets, etc.

37. (1.) It shall not be lawful newly to erect any house or to rebuild any house pulled down to or below the ground floor without a sufficient ashpit furnished with proper doors and coverings, and one or more proper and sufficient waterclosets according as circumstances may require, furnished with suitable water supply and water supply apparatus, and with suitable trapped soilpan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof.

(2.) If any person offends against the foregoing enactment of this section, he shall be liable to a fine not exceeding twenty pounds.

(3.) If at any time it appears to the sanitary authority that any house, whether built before or after the commencement of this Act, is without such ashpit or waterclosets as aforesaid, the sanitary authority shall cause notice to be served on the owner or occupier of the house, requiring him forthwith, or within such reasonable time as is specified in the notice, to provide the same in accordance with the directions in the notice; and, if the notice is not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as the case may require, (o) and may recover the expenses incurred by them in so doing from the owner of the house.

(4.) Provided that—

(a.) where sewerage or water supply sufficient for a watercloset is not reasonably available, this section shall be complied with by the provision of a privy or earth-closet; and

(b.) where a watercloset has before the commencement of this Act been and is used in common by the inmates of two or more houses, and in the opinion of the sanitary authority may continue to be properly so used, they need not require a watercloset to be provided for each house.

(5.) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section may appeal to the county council, whose decision shall be final.

38. [Sanitary conveniences for manufactories, etc., to be sufficient and suitable.] (p)

Power for
sanitary
authority
to authorize
examination
of water-
closets, etc.

40. (1.) The sanitary authority may examine any of the following works, that is to say, any watercloset, earth closet, privy, ashpit, or cesspool, and any water supply, sink, trap, siphon, pipe, or other works or apparatus connected therewith, upon any premises within their district, and for that purpose, or for the purpose of ascertaining the course of a drain, may at all reasonable times by day, after twenty-four hours' notice has been served on the occupier of the

(o) This power must only be exercised with reference to each particular case: *Tinkler v. Wandsworth*, 27 L. J. Ch. 342. See *St. Luke v. Lewis*, 31 L. J. M. C. 73,

and *Sherborne v. Bogle*, 46 J. P. 675.

(p) Applies to a cabmen's stableyard: *Bennett v. Harding*, 1900, 2 Q. B. 397.

premises, or if they are unoccupied on the owner, or in case of emergency without notice, enter on any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be.

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(2.) If any such work as aforesaid is found on examination to be in accordance with this Act and the byelaws of the county council and sanitary authority and directions of the sanitary authority given in any notice under this Act, and in proper order and condition, the sanitary authority shall cause the same to be reinstated and made good as soon as may be, and shall defray the expenses of examination, reinstating, and making good the same, and pay full compensation for all damages or injuries done or occasioned by the examination; but if on examination any such work is found not to be in proper order or condition, or not to have been made or provided by any person according to the said byelaws and directions, or to be contrary to this Act, the reasonable expenses of the examination shall be repaid to the sanitary authority by the person offending, and may be recovered by that authority in a summary manner.

41. (1.) In any of the following cases—

- (a.) if, on such examination as in the preceding section mentioned, any such work as therein mentioned is found not to have been made or provided by any person according to the byelaws of the county council and sanitary authority, and the directions of the sanitary authority given in any notice under this Act, or to be contrary to this Act, or
- (b.) if a person, without the consent of the sanitary authority, constructs or rebuilds any watercloset, earth closet, privy, ashpit, or cesspool which has been ordered by them either not to be made, or to be demolished, or
- (c.) if a person discontinues any water supply without lawful authority, or
- (d.) if a person destroys any sink, trap, siphon, pipe, or any connected works or apparatus as aforesaid either without lawful authority or so that the destruction creates a nuisance or is injurious or dangerous to health,

Penalty on persons improperly making or altering waterclosets, etc.

every person so offending shall be liable to a fine not exceeding ten pounds; and if he does not, within fourteen days after notice is served on him by the sanitary authority, or within any further time allowed by that authority or appearing to a petty sessional court necessary for the execution of the works, cause such watercloset, earth closet, privy, ashpit, or cesspool to be altered or reinstated in conformity with the said byelaws and directions, or, as the case may be, to be demolished, or such water supply to be renewed, or such sink, trap, siphon, pipe or other connected works or apparatus to be restored, such person shall be liable to a fine not exceeding twenty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and cause the work to be done, and the expenses thereof shall be paid by the person who has so offended.

(2.) If, on such examination as aforesaid, any watercloset, earth closet, privy, ashpit, or cesspool, or any water supply, sink, trap, siphon, pipe, or any of the connected works or apparatus as aforesaid, appears to be in bad order and condition, or to require cleansing, alteration, or amendment, (q) or to be filled up, the sanitary authority shall cause notice to be served on the owner or occupier of the premises, upon or in respect of which the inspection was made, requiring him forthwith, or within a reasonable time specified in the notice, to do what is necessary to place the work in proper order and condition; and if such notice is

(q) Does not *seem* refer to structural alteration? See *Fulham v. Solomon*, 1896, 1 Q. B. 198.

Sect. 41. not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute the works, and the expenses incurred by them in so doing shall be paid to them by the owner or occupier of the premises.

(3.) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to any watercloset, earth closet, privy, ashpit, or cesspool, may appeal to the county council, whose decision shall be final.

Sanitary
authority
to cause
offensive
ditches,
drains, etc.,
to be cleansed
or covered.

43. (1.) Every sanitary authority—

(a.) shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their district; and

(b.) shall cause notice to be served on the person causing any such nuisance, or on the owner or occupier of any premises whereon the same exists, requiring him, within the time specified in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch, drain, or place, or to construct a proper drain for the discharge of such filth, water, matter, or thing, or to execute such other works as the case may require.

(2.) If the person on whom such notice is served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as may be necessary for the abatement of the nuisance, and may recover the expenses thereby incurred from the owner of the premises: Provided that—

(a.) the sanitary authority, where they think it reasonable, may defray all or any portion of the said expenses, as expenses of sewerage are to be defrayed by that authority; and

(b.) where any work which a sanitary authority does or requires to be done in pursuance of this section interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, the sanitary authority shall make full compensation to all persons sustaining damage thereby, in manner provided by the Metropolis Management Act, 1855, (r) or if they think fit, may purchase such mill, or any such right connected therewith, or other right to the use of water; and the provisions of the said Act with respect to purchases by the sanitary authority shall be applicable to every such purchase as aforesaid.

(3.) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to the construction, covering, filling up, or other alteration of any drain may appeal to the county council, whose decision shall be final.

Power to
sanitary
authority to
provide
public con-
veniences.

44. (1.) Every sanitary authority may provide and maintain public lavatories and ashpits and public sanitary conveniences other than privies, in situations where they deem the same to be required, and may supply such lavatories and sanitary conveniences with water, and may defray the expense of

(r) See s. 86, *ante*, p. 332.

providing such lavatories, ashpits, and sanitary conveniences, and of any damage occasioned to any person by the erection or construction thereof, and the expense of keeping the same in good order, as if they were expenses of sewerage. Sect. 44.

(2.) For the purpose of such provision the subsoil of any road, exclusive of the footway adjoining any building or the curtilage of a building, shall be vested in the sanitary authority. (s)

45. (1.) Where a sanitary authority provide and maintain any public lavatories, ashpits, or sanitary conveniences, such authority may— Regulations as to public conveniences.

- (a.) make regulations with respect to the management thereof, and byelaws as to the decent conduct of persons using the same; and
- (b.) let the same for any term not exceeding three years at such rent and subject to such conditions as they may think fit; and
- (c.) charge such fees for the use of any lavatories or waterclosets provided by them as they may think proper.

(2.) No public lavatory, ashpit, or sanitary convenience shall be erected in or accessible from any street without the consent in writing of the sanitary authority, who may give their consent upon such terms as to the use thereof or the removal thereof at any time, if required by the sanitary authority, as they may think fit.

(3.) If any person erects a lavatory, ashpit, or sanitary convenience in contravention of this section, and after notice to that effect served by the sanitary authority does not remove the same, he shall be liable to a fine not exceeding five pounds, and to a fine not exceeding twenty shillings for every day during which the offence continues after a conviction for the offence.

(4.) Nothing in this section shall extend to any lavatory or sanitary convenience now or hereafter erected by any railway company within their railway station yard or the approaches thereto.

46. [Sanitary conveniences used in common to be cleansed by the users.]

Unsound Food

Unsound Food.

47. (1.) Any medical officer of health or sanitary inspector may at all reasonable times enter any premises and inspect and examine Inspection and destruction of unsound meat, etc.

- (a.) any animal intended for the food of man which is exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and

- (b.) any article, whether solid or liquid, intended for the food of man, and sold or exposed for sale or deposited in any place for the purpose of sale or of preparation for sale, (t)

the proof that the same was not exposed or deposited for any such purpose or was not intended for the food of man, resting with the person charged; and if any such animal or article appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice. . . .

(8.) Where a person has in his possession any article which is unsound or unwholesome or unfit for the food of man, he may, by written notice to the

(s) If the power be exercised *bonâ fide* and reasonably the discretion as to the mode will not be interfered with: *Westminster v. L. & N. W. Ry.*, 1905, A. C. 426.

(t) See *Barlow v. Terrett*, 1891, 2 Q. B. 107, and *Giebler v. Manning*, 1906, 1 K. B. 709.

- Sect. 47.** sanitary authority, specifying such article, and containing a sufficient identification of it, request its removal, and the sanitary authority shall cause it to be removed as if it were trade refuse.

*Provisions
as to Water.*

Power of
sanitary
authority
as to public
fountains.

Provisions (u) as to Water (x)

48. [House without proper supply—a nuisance.]

51. (1.) All existing public cisterns, reservoirs, wells, fountains, pumps, and works used for the gratuitous supply of water to the inhabitants of the district of any sanitary authority, and not vested in any person or authority other than the sanitary authority, shall vest in and be under the control of the sanitary authority; and that authority may maintain the same and plentifully supply them with pure and wholesome water, or may substitute, maintain, and plentifully supply with pure and wholesome water other such works equally convenient, and may maintain and supply with water as aforesaid other public cisterns, reservoirs, wells, fountains, pumps, and other such works within their district.

(2.) The sanitary authority may provide and maintain public wells, pumps, and drinking fountains in such convenient and suitable situations as they may deem proper.

(3.) If any person wilfully damages any of the said wells, pumps, or fountains, or any part thereof, he shall, in addition to any punishment to which he is liable, pay to the sanitary authority the expenses of repairing or reinstating such well, fountain, pump, or part thereof.

54. [Power to close polluted wells, etc., by order of petty sessional court.]

*Infectious
Diseases.—
Notification.*

Infectious Diseases—Notification

55. [Notification of infectious disease by head of family nearest relatives or medical practitioner.]

(7.) This section shall apply to every building, vessel, tent, van, shed, or

(u) By 28 & 29 Vict. c. 90, s. 12, on the occasion of a fire the chief or other officer in charge of the fire brigade may in his discretion take the command of any volunteer fire brigade or other persons who voluntarily place their services at his disposal and may remove or order any fireman to remove any persons who interfere by their presence with the operations of the fire brigade and generally he may take any measures that appear expedient for the protection of life and property with power by himself or his men to break into or through or take possession of or pull down any premises for the purpose of putting an end to a fire doing as little damage as possible; he may also on any such occasion cause the water to be shut off from the mains and pipes of any district in which the fire has occurred. . . . Any damage occasioned by the fire brigade in the due execution of their duties shall be deemed to be damage by fire within the meaning of any policy of insurance against fire. By s. 29 the brigade must render assistance to the salvage corps and hand over property saved to them.

The officer need not take possession of premises: *Joyce v. Met. Bd. of Works*, 44 L. T. 811.

(x) The Water Board—2 Ed. VII. c. 41, s. 3—may, if any person supplied with water . . . shall wilfully do or cause to be done any act matter or thing in contravention of the provisions of the Metropolitan Water Act 1852 or of the special Act . . . or of any Act incorporated therewith or shall wilfully omit or neglect to do any matter or thing which under such provisions ought to be done for the prevention of the waste misuse or undue consumption or the contamination of the water . . . turn off the water supplied by them to such person and cease to supply such person with water: 15 & 16 Vict. c. 84, s. 25. Under the like Act of 1871 they may in similar cases cut off any of the pipes by or through which water is supplied by them to him or for his use and may cease to supply him with water so long as the cause of injury remains or is not remedied: 34 & 35 Vict. c. 113, s. 32.

similar structure used for human habitation, in like manner as nearly as may be as if it were a house; but nothing in this section shall extend to any house, building, vessel, tent, van, shed, or similar structure belonging to Her Majesty the Queen, or to any inmate thereof, nor to any vessel belonging to any foreign government.

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(8.) In this section the expression "infectious disease to which this section applies" means any of the following diseases, namely, small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes as respects any particular district any infectious disease to which this section has been applied by the sanitary authority of the district in manner provided by this Act.

56. [Power of sanitary authority by order to add to number of infectious diseases of which notification is required and to revoke the same.]

Infectious Diseases—Prevention

Infectious Diseases.—Prevention.

58. The following provisions of this Act relating to dangerous infectious diseases shall apply to the infectious diseases specifically mentioned in the foregoing enactment of this Act relating to the notification of infectious disease, and all or any of such provisions may be applied by order to any other infectious disease in the same manner as that enactment may be applied to such disease, subject to the same power of revoking and varying the order, and every such infectious disease is in this Act referred to as a dangerous infectious disease.

59. (1.) Every sanitary authority shall provide, either within or without their district, proper premises with all necessary apparatus and attendance for the destruction and for the disinfection, and carriages or vessels for the removal, of articles (whether bedding, clothing, or other) which have become infected by any dangerous infectious disease, and may provide the same for the destruction, disinfection, and removal of such articles when infected by any other disease; and shall cause any such articles brought for destruction or disinfection, whether alleged to be infected by any dangerous infectious disease or by any other disease, to be destroyed or to be disinfected and returned, and may remove, and may destroy, or disinfect and return, such articles free of charge.

(2.) Any sanitary authorities may execute their duty under this section by combining for the purposes thereof, or by contracting for the use by one of the contracting authorities of any premises provided for the purpose of this section by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

60. (1.) Where the medical officer of health of any sanitary authority, or any other legally qualified medical practitioner, certifies that the cleansing and disinfecting of any house, or part thereof, and of any articles therein likely to retain infection, or the destruction of such articles, would tend to prevent or check any dangerous infectious disease, the sanitary authority shall serve notice on the master, or where the house or part is unoccupied on the owner, of such house or part that the same and any such articles therein will be cleansed and disinfected or (as regards the articles) destroyed, by the sanitary authority, unless he informs the sanitary authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part and any such articles or destroy such articles to the satisfaction of the medical officer of health, or of any other legally qualified medical practitioner, within a time fixed in the notice.

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(2.) If either—

(a.) within twenty-four hours from the receipt of the notice, the person on whom the notice is served does not inform the sanitary authority as aforesaid, or

(b.) having so informed the sanitary authority he fails to have the house or part thereof and any such articles disinfected or such articles destroyed as aforesaid within the time fixed in the notice, or

(c.) the master or owner without such notice gives his consent, the house or part and articles shall be cleansed and disinfected or such articles destroyed by the officers and at the cost of the sanitary authority under the superintendence of the medical officer of health.

(3.) For the purpose of carrying into effect this section the sanitary authority may enter by day on any premises.

(4.) The sanitary authority shall provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any dangerous infectious disease has appeared, who have been compelled to leave their dwellings, for the purpose of enabling such dwellings to be disinfected by the sanitary authority.

(5.) When the sanitary authority have disinfected any house, part of a house, or article, under the provisions of this section, they shall compensate the master or owner of such house, or part of a house, or the owner of such article, for any unnecessary damage thereby caused to such house, part of a house, or article; and when the authority destroy any article under this section they shall compensate the owner thereof; and the amount of any such compensation shall be recoverable in a summary manner.

Disinfection
of bedding,
etc.

61. (1.) Any sanitary authority may serve a notice on the owner of any bedding, clothing, or other articles which have been exposed to the infection of any dangerous infectious disease, requiring the delivery thereof to an officer of the sanitary authority for removal for the purpose of destruction or disinfection; and if any person fails to comply with such notice he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds.

(2.) The bedding, clothing, and articles if so disinfected by the sanitary authority shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage the authority shall compensate the owner for the same, and the authority shall also compensate the owner for any articles destroyed; and the amount of compensation shall be recoverable in a summary manner.

Infectious
rubbish
thrown into
ash-pits, etc.,
to be disin-
fected.

62. (1.) If a person knowingly casts, or causes or permits to be cast, into any ash-pit any rubbish infected by a dangerous infectious disease without previous disinfection, he shall be liable to a fine not exceeding five pounds, and, if the offence continues, to a further fine not exceeding forty shillings for every day during which the offence so continues after the notice hereafter in this section mentioned.

(2.) The sanitary authority shall cause their officers to serve notice of the provisions of this section on the master of any house or part of a house in which they are aware that there is a person suffering from a dangerous infectious disease, and on the request of such master shall provide for the removal and disinfection or destruction of the aforesaid rubbish.

66. [Removal to hospital of infected persons without proper lodging by order of a justice.] (y)

(y) As to removal from common lodging houses, see 16 & 17 Vict. c. 41, s. 7.

67. [Detention of infected person without proper lodging in hospital by order of a justice.] Sect. 67.

70. [Prohibition on conveyance of infected person in public conveyance.]

It shall be the duty of the sanitary authority, when so requested by the owner or driver of such conveyance, if any person so suffering is so conveyed, to provide for the disinfection of the same, and they may do so free of charge.

71. [Inspection of dairies by medical officer on order of a justice, and power to prohibit supply of milk.]

(7.) Nothing in or done under this section shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886, (z) or this Act, or of any order, licence, or act of the Board of Agriculture or the Local Government Board thereunder, or of any order, byelaw, regulation, licence, or act of a local authority made, granted, or done under any such order of the Board of Agriculture, or the Local Government Board, or exempt any dairy, building, or thing or any person from the provisions of any general Act relating to dairies, milk, or animals.

Prevention of Epidemic Diseases

Prevention of Epidemic Diseases.

82. (1.) The sanitary authority of any district within which or part of which regulations issued by the Local Government Board in pursuance of section one hundred and thirty-four of the Public Health Act, 1875 (in this Act referred to as the epidemic regulations) are in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things, as may be necessary for mitigating any disease to which the regulations relate, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Sanitary authority to execute epidemic regulations. 38 & 39 Vict. c. 55.

(2.) The sanitary authority may direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation.

(3.) The sanitary authority shall have power to enter on any premises or vessel for the purpose of executing or superintending the execution of any of the epidemic regulations.

83. (1.) Whenever, in compliance with the epidemic regulations, any poor law medical officer performs any medical service on board any vessel, he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the poor law union for which he is appointed; and such charges shall be paid by the master of the vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick. Poor law medical officers entitled to costs of attendance on board vessels.

(2.) Where such service is rendered by any medical practitioner who is not a poor law medical officer, he shall be entitled to charge for the service with extra remuneration on account of distance, at the rate which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, and such charge shall be paid as aforesaid. Any dispute in respect of such charge may, where the charges do not exceed twenty pounds, be determined by a petty sessional court; and that court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

89. [Power of justice in certain cases to order removal of dead body to mortuary, and burial within time limited or immediately.]

(2.) Unless the friends or relations of the deceased undertake to bury and

(z) See now also 57 & 58 Vict. c. 57, *post*, p. 375.

Sect. 89. do bury the body within the time so limited, it shall be the duty of the relieving officer to bury such body, and any expense so incurred shall be paid (in the first instance) by the board of guardians of the poor law union, but may be recovered by them in a summary manner from any person legally liable to pay the expense of such burial.

*Tents and
Vans.*

Tents and
vans used
for human
habitation.

Tents and Vans

95. (1.) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious or dangerous to health, or is so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family, shall be a nuisance liable to be dealt with summarily under this Act.

(2.) A sanitary authority may make byelaws for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connexion with the same.

(3.) Where any person duly authorized by a sanitary authority or by a justice has reasonable cause to suppose either—

(a.) that any tent, van, shed, or similar structure used for human habitation is in such a state or so overcrowded as aforesaid, or that there is any contravention therein of any byelaw made under this section; or

(b.) that there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disease, he may enter by day such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether such tent, van, shed, or structure is in such a state or so overcrowded as aforesaid, or whether there is therein any such contravention, or a person suffering from a dangerous infectious disease, and the provisions of this Act with respect to the entry into any premises by an officer of the sanitary authority shall apply to the entry by any person duly authorized as aforesaid.

(4.) Nothing in this section shall apply to any tent, van, shed, or structure erected or used by any portion of Her Majesty's naval or military forces.

*Underground
Rooms.*

Provisions
as to the
occupation
of under-
ground
rooms as
dwellings.

Underground Rooms

96. (1.) Any underground room, which was not let or occupied separately as a dwelling before the passing of this Act, shall not be so let or occupied unless it possesses the following requisites, that is to say,

(a.) unless the room is in every part thereof at least seven feet high measured from the floor to the ceiling, and has at least three feet of its height above the surface of the street or ground adjoining or nearest to the room: Provided that, if the width of the area herein-after mentioned is not less than the height of the room from the floor to the said surface of the street or ground, the height of the room above such surface may be less than three feet, but it shall not in any case be less than one foot, and the width of the area need not in any case be more than six feet;

(b.) unless every wall of the room is constructed with a proper damp course, and, if in contact with the soil, is effectually secured against dampness from that soil;

- (c.) unless there is outside of and adjoining the room and extending along the entire frontage thereof and upwards from six inches below the level of the floor thereof an open area properly paved at least four feet wide in every part thereof: Provided that in the area there may be placed steps necessary for access to the room, and over and across such area there may be steps necessary for access to any building above the underground room, if the steps in each case be so placed as not to be over or across any external window;
 - (d.) unless the said area and the soil immediately below the room are effectually drained;
 - (e.) unless, if the room has a hollow floor, the space beneath it is sufficiently ventilated to the outer air;
 - (f.) unless any drain passing under the room is properly constructed of a gas-tight pipe;
 - (g.) unless the room is effectually secured against the rising of any effluvia or exhalation;
 - (h.) unless there is appurtenant to the room the use of a water-closet and a proper and sufficient ash-pit;
 - (i.) unless the room is effectually ventilated;
 - (j.) unless the room has a fire-place with a proper chimney or flue;
 - (k.) unless the room has one or more windows opening directly into the external air with a total area clear of the sash frames equal to at least one tenth of the floor area of the room, and so constructed that one half at least of each window of the room can be opened, and the opening in each case extends to the top of the window.
- (2.) If any person lets or occupies, or continues to let, or knowingly suffers to be occupied, any underground room contrary to this enactment, he shall be liable to a fine not exceeding twenty shillings for every day during which the room continues to be so let or occupied.
- (3.) The foregoing provisions shall at the expiration of six months after the commencement of this Act extend to underground rooms let or occupied separately as dwellings before the passing of this Act, except that the sanitary authority, either by general regulations providing for classes of underground rooms, or on the application of the owner of such room in any particular case, may dispense with or modify any of the said requisites which involve the structural alteration of the building, if they are of opinion that they can properly do so having due regard to the fitness of the room for human habitation, to the house accommodation in the district, and to the sanitary condition of the inhabitants and to other circumstances, but any requisite which was required before the passing of this Act shall not be so dispensed with or modified.
- (4.) The dispensations and modifications may be allowed either absolutely or for a limited time, and may be revoked and varied by the sanitary authority, and shall be recorded together with the reasons in the minutes of the sanitary authority.
- (5.) If the owner of any room feels aggrieved by a dispensation or modification not being allowed as regards that room, he may appeal to the Local Government Board, and that Board may refuse the dispensation or modification, or allow it wholly or partly, as if they were the sanitary authority. Such allowance may be revoked or varied by the Board, but not by the sanitary authority.
- (6.) Where two or more underground rooms are occupied together, and are not occupied in conjunction with any other room or rooms on any other floor of

Sect. 96. the same house, each of them shall be deemed to be separately occupied as a dwelling within the meaning of this section.

(7.) Every underground room in which a person passes the night shall be deemed to be occupied as a dwelling within the meaning of this section; and evidence giving rise to a probable presumption that some person passes the night in an underground room shall be evidence, until the contrary is proved, that such has been the case.

(8.) Where it is shown that any person uses an underground as a sleeping-place, it shall, in any proceeding under this section, lie on the defendant to show that the room is not separately occupied as a dwelling.

(9.) For the purpose of this section the expression "underground room" includes any room of a house the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room.

Enforcement
of provisions
as to under-
ground
rooms.

97. (1.) Any officer of a sanitary authority appointed or determined by that authority for the purpose shall, without any fee or reward, report to the sanitary authority, at such times and in such manner as the sanitary authority may order, all cases in which underground rooms are occupied contrary to this Act in the district of such authority.

(2.) Any such officer or any other person having reasonable grounds for believing that any underground room is occupied in contravention of this Act may enter and inspect the same at any hour by day; and if admission is refused to any person other than an officer of the sanitary authority the like warrant may be granted by a justice under this Act as in case of refusal to admit any such officer.

(3.) A warrant of a justice authorizing an entry into an underground room may authorize the entry between any hours specified in the warrant.

*Authorities
for execution
of Act.*

Definition
of sanitary
authority.
18 & 19 Vict.
c. 120.
48 & 49 Vict.
c. 33.
50 & 51 Vict.
c. 17.

Authorities for Execution of Act

99. (1.) Subject to the provisions of this Act, the sanitary authority for the execution of this Act (in this Act referred to as "the sanitary authority") shall be as follows; (namely,)

(a.) in the City of London the commissioners of sewers; and

(b.) in each of the parishes (a) mentioned in Schedule (A.) to the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, other than Woolwich, the vestry of the parish; and

(c.) in each of the districts mentioned in Schedule (B.) to the same Act, as so amended, the district board for the district; and

(d.) in the parish of Woolwich, the local board of health; and (a)

(e.) in any place mentioned in Schedule (C.) to the Metropolis Management Act, 1855, the board of guardians for such place or for any parish or poor law union of which it forms part, or, if there is no such board of guardians, the overseers of the poor for such place, or for the parish in which it is situate, and the said guardians and overseers respectively shall have the same powers for the purposes of this Act as a vestry or district board have under this Act, and their expenses shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in the said place.

(a) See now 62 & 63 Vict. c. 14, which established London boroughs.

(2.) The area within which this Act is executed by any sanitary authority is in this Act referred to as the district of that authority. Sect. 99.

100. The county council, on it being proved to their satisfaction that any sanitary authority have made default in doing their duty under this Act with respect to the removal of any nuisance, the institution of any proceedings, or the enforcement of any byelaw, may institute any proceeding and do any act which the authority might have instituted or done for that purpose, and shall be entitled to recover from the sanitary authority in default all such expenses in and about the said proceeding or act as the county council incur, and are not recovered from any other person, and have not been incurred in any unsuccessful proceeding.

Power of county council to prosecute on default of sanitary authority.

101. (1.) Where complaint is made by the county council to the Local Government Board that a sanitary authority have made default in executing or enforcing any provisions which it is their duty to execute or enforce of this Act, or of any byelaw made in pursuance thereof, the Local Government Board, if satisfied after due inquiry that the authority have been guilty of the alleged default, and that the complaint cannot be remedied under the other provisions of this Act, shall make an order limiting a time for the performance of the duty of such authority in the matter of such complaint. If such duty is not performed by the time limited in the order, the order may be enforced by writ of Mandamus, or the Local Government Board may appoint the county council to perform such duty.

Proceedings on complaint to Local Government Board of default of sanitary authority.

(2.) Where such appointment is made, the county council shall, for the purpose of the execution of their duties under the said appointment, have all the powers of the defaulting sanitary authority, . . .

102. (1.) The provisions of the Public Health Act, which are set out in the Second Schedule to this Act, (b) except so far as they are superseded by this Act, shall extend to the parish of Woolwich, and to the local board of health (c) thereof, in like manner as they apply to any urban sanitary district elsewhere, and the sanitary authority thereof, without prejudice to the existing effect of the Metropolis Management Act, 1855, and the Acts amending the same, or to the powers, duties, and liabilities of the county council and the local board of health (c) of Woolwich under the latter Acts.

Application of Public Health Acts to Woolwich.

109. A sanitary authority, where occasion requires, may, with the sanction of the Local Government Board, make any temporary arrangement for the performance of all or any of the duties of a medical officer of health or sanitary inspector, and any person appointed by virtue of any such arrangement to perform those duties, or any of them, shall, subject to the terms of his appointment, have all the powers, duties, and liabilities of a medical officer of health or sanitary inspector as the case may be.

Temporary arrangement for duties of medical officer or sanitary inspector.

110. (1.) For the purposes of this Act any vessel lying in any river or other water within the district of a sanitary authority shall (subject to the provisions of this Act with respect to the port sanitary authority of the port of London) be subject to the jurisdiction of that authority in the same manner as if it were a house within such district.

Jurisdiction as to ships.

(2.) The master of any such vessel shall be deemed for the purposes of this Act to be the occupier of such vessel.

(3.) This section shall not apply to any vessel under the command or charge of any officer hearing Her Majesty's commission, or to any vessel belonging to any foreign government.

(b) Ss. 4, 10, 13, 15-21, 23, 24, 26, 41, 54-58, 65, 144, 149-151, 153, 155, 158-160, 166, 167, 305, 308, 316, 327, 330-332, 334-336, 340, 341, *ante*, pp. 268-306.
(c) Now council.

Sect. 111.

Port Sanitary Authority of Port of London

*Port
Sanitary
Authority
of Port of
London.*

*Port sanitary
authority
of port of
London.*

*Powers of
port sanitary
authority of
port of
London.
38 & 39 Vict.
c. 55.*

111. The Mayor, Commonalty, and Citizens of the City of London shall continue to be the port sanitary authority of the port of London, as established for the purposes of the laws relating to the customs of the United Kingdom, . . .

112. (1.) The Local Government Board may by order assign to the port sanitary authority of the port of London any powers, rights, duties, capacities, liabilities, or obligations of a sanitary authority under this Act, or of a sanitary authority under the Public Health Act, 1875, and any Act extending or amending the same respectively, with such modifications and additions (if any) as may appear to the Board to be required, and the order may extend to the said port a byelaw made under this Act otherwise than by the port sanitary authority, and any such byelaw until so extended shall not extend to the said port; and the said port sanitary authority shall have the powers, rights, duties, capacities, liabilities, and obligations assigned by such order in and over all waters within the limits of the said port, and also in and over such districts or parts of districts of riparian authorities as may be specified in any such order, and the order may extend this Act, and any part thereof, and any byelaw made thereunder, to such waters and districts and parts of districts when not situate in London.

(3.) The said port sanitary authority may, with the sanction of the Local Government Board, delegate to any riparian authority the exercise of any powers conferred on the port sanitary authority by the order of the Board, but except in so far as such delegation extends no other authority shall exercise any powers conferred on such port sanitary authority by the order of the Board within the limits of the port of London.

(4.) "Riparian authority" in this section means any sanitary authority under this Act and any sanitary authority under the Public Health Act, 1875, whose district or part of whose district forms part of or abuts on any part of the said port, and any conservators, commissioners, or other persons having authority in or over any part of the said port.

*Application
of Public
Health Acts
as to Cholera,
etc.*

Application of Public Health Acts as to Cholera, etc.

113. [Powers of Local Government Board to make regulations as to epidemic diseases.]

*Legal Pro-
ceedings.*

Legal Proceedings

*General
provisions as
to powers of
entry.*

115. (1.) Where a sanitary authority have by virtue of this Act power to examine or enter any premises, whether a building, vessel, tent, van, shed, structure, or place open or enclosed, they may examine or enter by any members of the authority, or by any officers or persons authorized by them, either generally or in any particular case. (*d*)

(2.) Where a sanitary authority, or their officers, or any persons acting under such authority, or under any of their officers, have by virtue of any enactment in this Act, a right to enter any premises, whether a building, vessel, tent, van, shed, structure, or place open or enclosed, then, subject to any special provisions

(*d*) By 14 & 15 Vict. c. 28, s. 12, the keeper of a common lodging house and every other person having or acting in the care or management thereof shall at all times when required by any officer of the local authority give him free access to such house or any part thereof. Such

a house maintained as a charitable institution is within the Act: *Logsdon v. Booth*, 1900, 1 Q. B. 401; *Logsdon v. Trotter*, 1900, 1 Q. B. 617, if payment is made by or on behalf of the persons admitted: *Parker v. Talbot*, 1905, 2 Ch. 643.

contained in such enactment, the following provisions shall apply, that is Sect. 115.
to say—

(a.) The person so claiming the right to enter shall, if required, produce some written document, properly authenticated on the part of the sanitary authority, showing the right of the person producing the same to enter;

(3.) [A justice may by warrant under his hand authorize the sanitary authority or their officers or other person, as the case may require, to enter the premises, and if need be by force, with such assistants as they or he may require, and there execute their duties under this Act.]

123. [Appearance of sanitary authority in legal proceedings.]

126. [Appeals to the county council against a notice or act of a sanitary authority.]

127. [Authentication of notices.]

128. [Service of notices.]

132. This Act shall (save as otherwise expressly provided) extend only to Extent of Act.

London:

Provided that this Act shall extend to places elsewhere so far as is necessary for giving effect to any provisions thereof in their application to London and to any places to which such provisions are expressly applied.

City of London

City of London.

133. In the application of this Act to the City of London the following Application of Act to
modifications shall be made:

(a.) There shall be no appeal under this Act from the commissioners of City.
sewers to the county council:

(b.) The byelaws made by the county council under this Act shall not extend to the city: . . .

(d.) The powers of the county council under this Act to proceed in case of default of a sanitary authority shall not extend to the commissioners of sewers.

134. Where it is proved to the satisfaction of the Local Government Board Power of city police to
that the commissioners of sewers have made default in doing their duty in proceed in
relation to nuisances under this Act, the Board may authorize any officer of certain cases
police of the city of London to institute any proceeding which the commissioners against
might institute with regard to such nuisances, . . . Such officer of police shall nuisances.
not for the purpose of this section be at liberty to enter any house or part of
a house used as the dwelling of any person without either such person's consent,
or the warrant of a justice.

135. (1.) Where complaint is made to the Local Government Board that Proceedings
the commissioners of sewers have made default in executing or enforcing any on complaint
provisions of this Act, the Local Government Board, if satisfied, after due to Local
inquiry, that those commissioners have been guilty of the alleged default, shall Government
make an order limiting a time for the performance of their duty in the matter Board of
of such complaint. If the duty is not performed by the time limited in the default of
order, the order may be enforced by writ of Mandamus, or the Local Government Commissioners of
Board may appoint some person to perform the duty, . . . Sewers.

(2.) Any person so appointed shall, in the performance and for the purposes of the said duty, be invested with all the powers of the commissioners of sewers other than (save as herein-after provided) the powers of levying rates; and the Local Government Board may by order change any person so appointed.

Sect. 135.

(3.) Any sum specified in an order of the Local Government Board for payment of the expenses of performing the duty of the commissioners of sewers, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by those commissioners, and to be a debt due from them, and payable out of any moneys in their hands or the hands of their officers, or out of any rate applicable to the payment of any expenses properly incurred by the commissioners (which rate is in this section referred to as "the local rate"). If the commissioners refuse to pay any such debt for a period of fourteen days after demand, the Local Government Board may by order empower any person to levy, by and out of the local rate, such sum (to be specified in the order) as may, in the opinion of the Local Government Board, be sufficient to defray the debt, and all expenses incurred in consequence of the nonpayment thereof.

(4.) Any person so empowered shall have the same powers of levying the local rate, and requiring all officers of the commissioners of sewers to pay over any money in their hands, as the commissioners would have in the case of expenses legally payable out of a local rate to be raised by them; . . .

Saving Clauses

*Saving
Clauses.*
Saving for
water rights.

136. Nothing in this Act shall be construed to authorize any sanitary authority to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any river or canal; or to injuriously affect any reservoir, canal, river, or stream, or the feeders thereof, or the supply, quality, or fall of water, contained in any reservoir, canal, river, stream, or in the feeders thereof, in cases where any person would, if this Act had not been passed, have been entitled by law to prevent or be relieved against the injuriously affecting of such reservoir, canal, river, stream, feeders, or such supply, quality, or fall of water, unless the sanitary authority first obtain the consent in writing of the person so entitled as aforesaid.

Saving for
Thames Con-
servators.
33 & 34 Vict.
c. 149.
Powers of
Act to be
cumulative.

137. Nothing in this Act shall affect any power of the Conservators of the Thames under the Thames Navigation Act, 1870, or otherwise.

138. All powers, rights, and remedies given by this Act shall be in addition to and not in derogation of any other powers, rights, and remedies conferred by any Act of Parliament, law, or custom, and all such other powers, rights, and remedies may be exercised and put in force in the same manner and by the same authority as if this Act had not passed.

Interpretation

*Interpreta-
tion.*
Interpreta-
tion of terms.

141. In this Act, unless the context otherwise requires,—

The expression "London" means the administrative county of London :

The expression "county council" means the London County Council :

The expression "the Metropolitan Asylum Managers" means the Managers of the Metropolitan Asylum District :

The expression "street" includes any highway, and any public bridge, and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, and whether or not there are houses in such street :

The expression "premises" includes messuages, buildings, lands, easements, and hereditaments of any tenure, whether open or enclosed, whether built on or not, and whether public or private, and whether maintained or not under statutory authority :

The expression "house" includes schools, also factories and other buildings in which persons are employed: Sect. 141.

The expressions "building" and "house" respectively include the curtilage of a building or house, and include a building or house wholly or partly erected under statutory authority:

The expression "bakehouse" means any place in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived:

The expression "vessel" includes a boat and every description of vessel used in navigation:

The expression "hospital" means any premises or vessels for the reception of the sick, whether permanently or temporarily applied for that purpose, and includes an asylum of the Metropolitan Asylum Managers:

The expression "master" means in the case of a building or part of a building, a person in occupation of or having the charge, management, or control of the building, or part of the building, and in the case of a house the whole of which is let out in separate tenements, or in the case of a lodging-house the whole of which is let to lodgers, includes the person receiving the rent payable by the tenants or lodgers either on his own account or as the agent of another person, and in the case of a vessel means the master or other person in charge thereof:

The expression "house refuse" (e) means ashes, cinders, breeze, rubbish, night-soil, and filth, but does not include trade refuse:

The expression "trade refuse" means the refuse of any trade, manufacture, or business, or of any building materials:

The expression "street refuse" means dust, dirt, rubbish, mud, road-scrappings, ice, snow, and filth:

The expression "owner" means the person for the time being receiving the rackrent of the premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such premises were let at a rackrent: (f)

The expression "rackrent" means rent which is not less than two-thirds of the full annual value of the premises out of which the rent arises; and the full annual value shall be taken to be the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for the premises, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and if the landlord undertook to bear the cost of the repairs, and insurance, and the other expenses (if any) necessary to maintain the premises in a state to command such rent:

The expression "slaughterer of cattle or horses" means a person whose business it is to kill any description of cattle, or horses, asses, or mules, for the purpose of the flesh being used as butcher's meat; and the expression "slaughter-house" means any building or place used for the purpose of such business:

The expression "knacker" means a person whose business it is to kill any horse, ass, mule, or cattle which is not killed for the purpose of the flesh being used as butcher's meat; and the expression "knacker's yard" means any building or place used for the purpose of such business:

(e) *Westminster v. Gordon*, 1 K. B. 910.

term less a few days: *Truman v. Kerslake*, 1894, 2 Q. B. 774.

(f) Includes a sub-lessee of the whole P.O.

Sect. 141.

The expression "cattle" includes sheep, goats, and swine :

The expression "source of water supply" means any stream, reservoir, aqueduct, pond, well, tank, cistern, pump, fountain, or other work or means for the supply of water, whether actually used or capable of being used for the supply of water or not :

The expression "sanitary convenience" includes urinals, water-closets, earth closets, privies, and any similar conveniences :

The expression "day" means the period between six o'clock in the morning and the succeeding nine o'clock in the evening :

The expression "ashpit" means any ashpit, dust-bin, ash-tub, or other receptacle for the deposit of ashes or refuse matter :

The expression "cistern" includes a water-butt :

The expression "dairy" includes any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale :

The expression "dairyman" includes any cowkeeper, purveyor of milk, or occupier of a dairy.

2. INHERENT POWERS

CONSTABLES

*Inherent
Powers,
Constables.*

CONSTABLES may be required to assist other officers in the execution of certain powers of this class. But the assistance is here limited apparently to the protection of such other officers who may be resisted in the exercise of their duty, and can be given only in the daytime, which excludes night and twilight. (a)

Arrest.—The inherent power of a constable to arrest here is confined to cases of breach of the peace and those misdemeanours detailed below. A person cannot be arrested on suspicion of having committed a misdemeanour. (b)

In breaches of the peace arrest on Sunday is permissible. (c)

If there be any disorderly drinking or noise at an unseasonable time of the night, especially in inns, a constable demanding entrance and being refused may break open the doors to see and suppress the disorder. (d)

The jurisdiction of justices in these cases is limited to six months from the commission of the offence, (e) and time runs as soon as the defendant's default or liability is complete. (f)

Under the Gaming, Highway and Vagrant Acts, any person may arrest, which includes the case of a constable out of his jurisdiction. (g)

Any person—

who shall be guilty of riotous violent or indecent behaviour in England or Ireland in any cathedral church parish or district church or chapel of the church of England or Ireland or in any chapel of any religious denomination or in England in

(a) *Attorney-General v. Kissane*, 32 L. R. I. 220, is, it is submitted, based on an excessive view of the royal authority. See *American Co. v. Hendry*, 62 L. J. Q. B. 388.

(b) *Matthews v. Bidulph*, 11 L. J. M. C. 13; *Bowditch v. Balchin*, 5 Ex. 378.

(c) 29 Car. II. c. 7, s. 6.

(d) 2 Hale P. C. 75.

(e) 11 & 12 Vict. c. 43, s. 11. See *Morris v. Duncan*, 1899, 1 Q. B. 4.

(f) *Labalmondiere v. Addison*, 28 L. J. M. C. 25; *Reeves v. Yeates*, 31 ib. 241; *Corbett v. Badger*, 84 L. T. 602.

(g) See *ante*, p. 40.

any place of religious worship duly certified under the provisions of [18 & 19 Vict. c. 81] whether during the celebration of divine service or at any other time or in any churchyard or burial ground or who shall molest let disturb vex or trouble or by any other unlawful means disquiet or misuse any preacher duly authorized to preach therein or any clergyman in holy orders ministering or celebrating any sacrament or any divine service rite or office in any cathedral church or chapel or in any churchyard or burial ground

may be immediately apprehended by any constable and taken before a justice. (*h*) The disturbance must be wilful and intentional, (*i*) and may be committed by a clergyman. (*k*)

Breach of
peace.

As was above stated, the constable may arrest for a breach of the peace committed in his view. But it must be actual, (*l*) and he may arrest as soon after as he conveniently can, so as it come within the expression "recently." (*m*) The disturbing of a meeting of justices is apparently a breach. (*n*) The continued ringing of a door-bell without cause or excuse is not itself such a breach, but it is eminently calculated to lead to it, and if it is done and persisted in, in view of the constable, he may arrest. (*o*) The disturbance and annoyance of a public meeting by putting questions to the speakers, making observations on their statements, and saying "that is a lie," is not a breach of the peace. (*p*) Nor is using loud words in the street, (*q*) and arrest in such case is unjustifiable. (*r*) But if a constable be engaged in preventing a breach of the peace, and a person stands in his way to hinder his doing so, he may arrest such person. (*s*)

Cruelty to
Animals.

By the Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92)—

13. When and so often as any of the offences against the provisions of this Act shall happen it shall and may be lawful for any constable upon his own view thereof . . . to seize (*t*) and secure by the authority of this Act any such offender and forthwith without any other authority or warrant to convey such offender before a justice.

Definition.

29. The word "animal" shall be taken to mean any horse mare gelding bull ox cow heifer steer calf mule ass sheep lamb hog pig sow goat dog cat or any other domestic animal.

This definition is extended to any domestic animal whether of the kind or

(*h*) 23 & 24 Vict. c. 32, s. 3; 43 & 44 Vict. c. 41, s. 8. This last, which applies to burials, not applicable to I.

(*i*) *Williams v. Glenister*, 2 B. & C. 699; and see *post*, p. 440.

(*k*) *Vallancey v. Fletcher*, 1897, 1 Q. B. 265.

(*l*) *Wheeler v. Whiting*, 9 C. & P. 262.

(*m*) *R. v. Light*, 27 L. J. M. C. 1.

(*n*) *Stone*, 23rd ed., 645.

(*o*) *Grant v. Moser*, 5 M. & G. 123.

(*p*) *Wooding v. Oxley*, 9 C. & P. 1.

(*q*) *Hardy v. Murphy*, 1 Esp. 294.

(*r*) *R. v. Lockley*, 4 F. & F. 155.

(*s*) *Lery v. Edwards*, 1 C. & P. 40; and see *Lewis v. Arnold*, 4 *ib.* 354.

(*t*) As to the power of the officer to enter on private lands, see *Shepherd v. Menzies*, 2 F. 443.

species enumerated above or of any other kind or species whatever and whether a quadruped or not. (u) The offences are— Sect. 29.

2. If any person shall . . . cruelly beat ill-treat over-drive abuse or torture or cause or procure to be cruelly beaten ill-treated over-driven abused or tortured any animal. Cruelty.

There is no offence if the defendant did not know of the pain caused. (x) Cutting cocks' combs for fighting or winning prizes is within the section (y) and so is dishorning. (z) But operating for the purpose of improving an animal is not. (a) Nor is mere passive cruelty by not killing a wounded animal (b) unless there be evidence of its being kept in such a manner as to amount to torturing. (c)

3. Every person who shall keep or use or act in the management of any place for the purpose of fighting or baiting any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature, or shall permit or suffer any place to be so used, . . . provided always, that every person who shall receive money for the admission of any other person to any place kept or used for any of the purposes aforesaid shall be deemed to be the keeper thereof; and every person who shall in any manner encourage, aid, or assist at the fighting or baiting of any bull, bear, badger, dog, cock, or other animal as aforesaid . . . (d) Penalty for keeping, etc., places for bull-baiting, dog-fighting, etc.; and for assisting at such bull-baiting, etc.

5. Every person who shall impound or confine, or cause to be impounded or confined, in any pound or receptacle of the like nature, any animal, shall provide and supply during such confinement a sufficient quantity of fit and wholesome food and water to such animal; every such person who shall refuse or neglect to provide and supply such animal with such food and water as aforesaid . . . (e) Persons impounding animals to provide them food and water.

7. And whereas by an Act of Parliament passed in the twenty-sixth year of the reign of his late Majesty King George the Third, intituled "An Act for regulating houses and other places kept for the purpose of slaughtering horses," it is enacted, that every person and persons licensed according to the provisions of that Act shall cause to be painted or affixed over the door or gate of the house or place where he, she, or they shall carry on the business of slaughtering horses or other cattle, in large legible characters, his, her, and their name and names, together with the words "licensed for slaughtering horses, pursuant Penalty for neglect. 26 Geo. III. c. 71. Penalty on persons licensed under recited Act to keep places for slaughtering cattle, etc., for not affixing their names, etc.

(u) 17 & 18 Vict. c. 60, s. 3. It includes cocks: *Bridge v. Parsons*, 32 L. J. M. C. 95; *Allen v. Small*, 1904, 2 I. R. 705; and linnets: *Colam v. Pagett*, 12 Q. B. D. 66; but not young unacclimatized parrots: *Swan v. Sanders*, 50 L. J. M. C. 67; nor wild rabbits kept a few days: *Aplin v. Porritt*, 1893, 2 Q. B. 57; nor lions in a cage: *Harper v. Marks*, 1894, 2 Q. B. 319; nor seagulls: *Yates v. Higgins*, 1896, 1 Q. B. 166.

(x) *Elliott v. Osborne*, 55 J. P. 277.

(y) *Murphy v. Manning*, 2 Ex. D. 307.

(z) *Ford v. Wiley*, 58 L. J. M. C. 145; otherwise in I. See *R. v. McDonagh*, 28 L. R. I. 204.

(a) *Lewis v. Fermor*, 18 Q. B. D. 532.

(b) *Powell v. Knight*, 38 L. T. 607. Cf. *Duncan v. Pope*, 80 L. T. 120.

(c) *Everitt v. Davies*, 38 L. T. 360.

(d) This offence must be committed in a place usually kept for the purpose: *Clarke v. Hague*, 29 L. J. M. C. 105; *Morley v. Greenhalgh*, 32 L. J. M. C. 93. Hunting rabbits within an enclosed area of four acres is not within the section: *Pitts v. Millar*, L. R. 9 Q. B. 380; *Coyne v. Brady*, 12 Ir. C. L. 577.

(e) This does not apply to the pound-keeper: *Dargan v. Davies*, 2 Q. B. D. 118. Animals may be sold after seven days for the expenses: 17 & 18 Vict. c. 60, s. 1; *Layton v. Hurry*, 8 Q. B. 811.

Sect. 7.

to an Act passed in the twenty-sixth year of his Majesty King George the Third": . . .

Regulations as to treatment of horses or other cattle sent to be slaughtered.

Penalty for neglect of regulations.

Horses or other cattle sent to be slaughtered not to be employed.

Penalty.

Description of cattle sent to be slaughtered to be entered in a book.

Penalty for neglect, or for not allowing inspection of book.

Penalty for improperly conveying animals on vehicles.

Complaints to be made within one month after offence committed.

False dice.

Drunkenness.

8. Every person keeping or using or acting in the management of any place for the purpose of slaughtering horses or other cattle (not intended for butchers meat) shall, immediately upon any horse or other cattle being brought to or delivered at such place for the purpose of being slaughtered, cut off or cause to be cut off the hair from the neck of such horse or other cattle, and within three days from the time of such horse or other cattle being brought or delivered as aforesaid shall kill or cause to be killed the said horse or other cattle, and, until such horse or other cattle shall be killed, shall supply such horse or other cattle with a sufficient quantity of fit and wholesome food and water; if any person keeping or using or acting in the management of any such place shall neglect or omit to cut or cause to be cut off the hair of the neck of such horse or other cattle, or to kill or cause to be killed any such horse or other cattle within the time above limited, or shall neglect or omit to supply a sufficient quantity of fit and wholesome food and water to such horse or other cattle as aforesaid, . . .

9. If any person keeping or using or having the management of any place for the purpose of slaughtering horses or other cattle (not intended for butchers meat) shall use or employ or cause or permit to be used or employed any horse or other cattle brought to or delivered at, or which shall be in or upon, such place for the purpose of being slaughtered, or shall permit or suffer any such horse or other cattle to leave the said place to be employed in any manner of work, . . . and every person who shall be found using or employing any such horse or other cattle, or in the possession of any such horse or other cattle whilst so used or employed. (f)

10. Every person keeping or using or having the management of any place for slaughtering horses or other cattle (not intended for butchers meat) shall, at the time of receiving any horse or other cattle in such place, enter in a book such a full and correct description of the colour, marks, and gender of such horse or other cattle as may clearly distinguish and identify the same; and if any such person shall refuse or neglect to make or cause to be made such entry in a clear and distinct manner, or shall refuse or neglect to produce such book before any justice of the peace whenever required by such justice so to do, or shall refuse to allow such book to be inspected, and extracts to be made therefrom, at all reasonable times, by any constable, or other person duly authorized by such justice, . . .

12. If any person shall convey or carry or cause to be conveyed or carried in or upon any vehicle any animal in such a manner or position as to subject such animal to unnecessary pain or suffering, . . .

14. Every complaint under the provisions of this Act shall be made within one calendar month after the cause of such complaint shall arise; . . .

Persons playing with false dice may be arrested. (g)

So also may every person who in any highway or other public place whether a building or not, is guilty while drunk of riotous or disorderly behaviour or who is drunk while in charge on any highway or other public place of any carriage horse cattle or steam-engine, or who is drunk while in possession of any loaded firearms. (h) Or if a person is found drunk in any highway or other public place whether a building or not or on any licensed premises and appears to be

(f) This section applies to private as well as to licensed slaughter-houses:
Coleman v. Hall, L. R. 6 Q. B. 206.

(g) Arch. J. P. 123.

(h) 35 & 36 Vict. c. 94, s. 12.

incapable of taking care of himself (*j*) or while having charge of a child apparently under the age of 7 years. (*k*) For the purpose of all these sections "public place" shall include any place to which the public have access whether on payment or otherwise. (*l*)

Offenders who have escaped cannot be retaken without warrant unless the original offence was one for which no warrant was required. (*m*)

Under the following statutes the officer is only authorized to arrest persons found committing (*n*) offences.

By the Street Betting Act, 1906 (6 Ed. VII. c. 43), s. 1—

Any person frequenting or loitering in streets (*o*) or public places (*p*) on behalf either of himself or any other person for the purpose of bookmaking or betting or wagering or agreeing to bet or wager or paying or receiving or settling bets.

Not to apply to racecourses on race-days: s. 2.

Under the Diseases of Animals Act, 1894—

Where a person is seen or found committing or is reasonably suspected (*q*) of being engaged in committing an offence against this Act a constable may without warrant stop and detain him; and if his name and address are not known to the constable and such person fails to give them to the satisfaction of the constable, he may without warrant apprehend him. (*r*) If any person obstructs or impedes or assists to obstruct or impede a constable or other officer in the execution of this Act or of an order of the Board or of a regulation of a local authority he is also liable. (*s*) A person apprehended must be taken before a justice with all practicable speed. (*t*)

52. If any person, without lawful authority or excuse, proof whereof shall lie on him, does any of the following things, he shall be guilty of an offence against this Act:

- (i.) if he does anything in contravention of this Act, or of an order of the Board of Agriculture, or of a regulation of a local authority; or
- (ii.) if, where required by this Act or by an order of the Board to keep an animal separate as far as practicable, or to give notice of disease with all practicable speed, he fails to do so; (*u*) or
- (iii.) if he fails to give, produce, observe, or do any notice, (*x*) licence, rule, or

(i) 2 Ed. VII. c. 28, s. 1.

(k) S. 2.

(l) S. 8.

(m) 2 Hawk. c. 14, s. 9.

(n) As to this phrase, see *ante*, p. 73.

(o) Includes highway public bridge road lane footway square court alley or passage whether a thoroughfare or not.

(p) Includes public park garden or sea-beach and any unenclosed ground to which the public for the time being have unrestricted access and every enclosed place (not being a public park or garden) to which the public have a restricted right of access if betting prohibited by notice. See *Hasson*, 1908, S. C. 57; *Dunning v.*

Sweetman, 1909, 1 K. B. 774.

(q) See *ante*, p. 48.

(r) 57 & 58 Vict. c. 57, s. 43.

(s) Sub-s. 3.

(t) Sub-s. 4.

(u) See s. 4. He must be aware of the fact that the animal was diseased: *Nichols v. Hall*, L. R. 8 C. P. 322.

(x) As to an animal's being in a person's possession or charge, see *Robertson v. Perth*, 10 R. 68. Notice to police as to diseased animal is required by s. 4. The movement of cattle affected by pleuro-pneumonia or foot and mouth disease is restricted by s. 11.

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thing which by this Act, or by an order of the Board, or by a regulation of a local authority, he is required to give, produce, observe, or do; or

- (iv.) if he does anything which by this Act or an order of the Board is made or declared to be not lawful; or
- (v.) if he does or omits anything, the doing or omission whereof is declared by this Act or by an order of the Board to be an offence by him against this Act; or
- (vi.) if he refuses to an inspector or other officer, acting in execution of this Act, or of an order of the Board, or of a regulation of a local authority, admission to any land, (y) building, place, vessel, pen, vehicle, or boat which the inspector or officer is entitled to enter or examine, or obstructs or impedes him in so entering or examining, or otherwise in any respect obstructs or impedes an inspector or constable or other officer in the execution of his duty, or assists in any such obstructing or impeding; or
- (vii.) if he throws or places, or causes or suffers to be thrown or placed, into or in any river, stream, canal, navigation, or other water, or into or in the sea within three miles of the shore, the carcase of an animal which has died of disease, or been slaughtered as diseased or suspected;

Imprisonment
instead of fine
for use of
expired
licences,
digging up
of carcases,
and other
specified
offences.

53. (1.) If any person does any of the following things, he shall be guilty of an offence against this Act:

- (i.) if, with intent to unlawfully evade this Act, or an order of the Board of Agriculture, or a regulation of a local authority, he does anything for which a licence is requisite under this Act, or an order of the Board, or a regulation of a local authority, without having obtained a licence; or
- (ii.) if, where a licence is requisite, having obtained a licence, he, with the like intent, does the thing licensed after the licence has expired; or
- (iii.) if he uses or offers or attempts to use as such a licence an instrument not being a complete licence, or an instrument untrue purporting or appearing to be a licence, unless he shows to the satisfaction of the court that he did not know of that incompleteness or untruth, and that he could not with reasonable diligence have obtained knowledge thereof; or
- (iv.) if, with intent to unlawfully evade this Act, or an order of the Board of Agriculture, or a regulation of a local authority, he alters, or falsely makes, or ante-dates, or counterfeits, or offers or utters, knowing the same to be altered, or falsely made, or ante-dated, or counterfeited, a licence, declaration, certificate, or instrument made or issued, or purporting to be made or issued, under or for any purpose of this Act, or of an order of the Board or of a regulation of a local authority; or
- (v.) if, for the purpose of obtaining a licence, certificate, or instrument, he makes a declaration or statement false in any material particular, unless he shows to the satisfaction of the court that he did not

(y) By 3 Ed. VII. c. 43, s. 2, if so authorized by the Board of Agriculture an inspector of the local authority may subject to the direction of the authority

appointing the inspector and for the purposes of any order or regulation under this Act enter any premises and examine any sheep thereon.

- know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof: or
- (vi.) if he obtains or endeavours to obtain such a licence, certificate, or instrument by means of a false pretence, unless he shows to the satisfaction of the court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof: or
 - (vii.) if he grants or issues such a licence, certificate, or instrument, being false in any date or other material particular, unless he shows to the satisfaction of the court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof, or if he grants or issues such a licence, certificate, or instrument, having, and knowing that he has, no lawful authority to grant or issue the same: or
 - (viii.) if, with intent to unlawfully evade or defeat this Act, or an order of the Board, or a regulation of a local authority, he grants or issues an instrument being in form a licence, certificate, or instrument made or issued under this Act or an order of the Board or a regulation of a local authority, for permitting or regulating the movement of a particular animal, or the doing of any other particular thing, but being issued in blank, that is to say, not being before the issue thereof so filled up as to specify any particular animal or thing: or
 - (ix.) if he uses or offers or attempts to use for any purpose of this Act, or of an order of the Board, or of a regulation of a local authority, an instrument so issued in blank, unless he shows to the satisfaction of the court that he did not know of it having been so issued in blank, and that he could not with reasonable diligence have obtained knowledge thereof: or
 - (x.) if he by means of any fraud or false pretence obtains, or attempts to obtain, compensation from the Board or a local authority in respect of an animal slaughtered, or aids or abets any person in such fraud or false pretence: or
 - (xi.) if, without lawful authority or excuse, proof whereof shall lie on him, he digs up, or causes to be dug up, a carcase buried under the direction of the Board or of a local authority or of a receiver of wreck: or
 - (xii.) if, where the Board has by order prohibited, absolutely or conditionally, the use for the carrying of animals, or for any purpose connected therewith, of a vessel, vehicle, or pen, or other place, he, without lawful authority or excuse, proof whereon shall lie on him, does anything so prohibited.

59. (1.) In this Act, unless the context otherwise requires, the following terms have the meanings herein-after respectively assigned to them, that is to say: Interpretation and construction.

- the expression "cattle" means bulls, cows, oxen, heifers, and calves:
- the expression "animals" means, except where it is otherwise expressed, cattle, sheep, and goats, and all other ruminating animals, and swine:
- the expression "disease" means cattle plague (that is to say, rinderpest, or the disease commonly called cattle plague), contagious pleuro-pneumonia of cattle (in this Act called pleuro-pneumonia), foot-and-mouth disease, sheep-pox, sheep-scab, or swine-fever (that is to say, the disease known as typhoid fever of swine, soldier purples, red disease, hog cholera or swine-plague):

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the expression "diseased" means affected with disease :

the expression "suspected" means suspected of being diseased :

the expression "carcase" means the carcase of an animal, and includes part of a carcase, and the meat, bones, hide, skin, hoofs, horns, offal, or other part of an animal, separately or otherwise, or any portion thereof : . . .

the expression "inspector of the Board of Agriculture" or "inspector (z) of a local authority" means a person appointed to be an inspector for purposes of this Act by the Privy Council or the Board of Agriculture, or by a local authority, as the case may be ; and the expression "inspector," used alone, means such a person, by whichever authority appointed : . . .

(2.) In the computation of time for purposes of this Act, a period reckoned by days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

By the Explosives Act, 1875 (38 & 39 Vict. c. 17)—

Explosives.

78. Any person who is found committing any act for which he is liable to a penalty under this Act and which tends to cause explosion or fire in or about any factory magazine store railway canal harbour or wharf or any carriage ship or boat may be apprehended without a warrant by a constable or an officer of the local authority . . . and be removed from the place at which he is arrested and conveyed as soon as conveniently may be before a court of summary jurisdiction.

The material sections of the Act are as follows : (a)

Substances to
which this Act
applies.

3. This Act shall apply to gunpowder and other explosives as defined by this section.

The term "explosive" in this Act—

- (1.) Means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect ; and
- (2.) Includes fog-signals, fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

PART I

LAW RELATING TO GUNPOWDER

General Law as to Manufacture and Keeping of Gunpowder

Gunpowder to
be manufac-
tured only at
factory law-
fully existing
or licensed
under this Act.

4. The manufacture of gunpowder shall not, nor shall any process of such manufacture, be carried on except at a factory for gunpowder either lawfully existing or licensed for the same under this Act.

(z) See *Stanbury v. Exeter*, 1905, 2 K. B. 838.

(a) Notwithstanding that by s. 91 every offence against this Act is punishable by indictment, it has been retained in Pt. II. of this work. The only effect of this

stringent enactment was *seem* to furnish opportunity to the unscrupulously creating alarm to endeavour to extract money from the public through the machinery of the Act. It furnishes a good illustration of panic legislation.

Provided that nothing in this section shall apply to the making of a small quantity of gunpowder for the purpose of chemical experiment and not for practical use or for sale.

If any person manufactures gunpowder or carries on any process of such manufacture at any place at which he is not allowed by this section so to do, he shall be deemed to manufacture gunpowder at an unauthorized place.

Where gunpowder is manufactured at an unauthorized place—

(1.) All or any part of the gunpowder or the ingredients of gunpowder which may be found either in or about such place or in the possession or under the control of any person convicted under this section, may be forfeited; and

(2.) The person so manufacturing shall be liable to a penalty not exceeding one hundred pounds a day for every day during which he so manufactures.

5. Gunpowder shall not be kept at any place except as follows; that is to say, Gunpowder (except for private use) to be kept only in existing or new magazine or store, or in registered premises.

(1.) Except in the factory (either lawfully existing or licensed for the same under this Act) in which it is manufactured; or

(2.) Except in a magazine or store for gunpowder either lawfully existing or licensed under this Act for keeping gunpowder; or

(3.) Except in premises registered under this Act for keeping gunpowder.

Provided that this section shall not apply—

(1.) To a person keeping for his private use and not for sale gunpowder to an amount not exceeding on the same premises thirty pounds; or

(2.) To the keeping of any gunpowder by a carrier or other person for the purpose of conveyance, when the same is being conveyed or kept in accordance with the provisions of this Act with respect to the conveyance of gunpowder.

Any gunpowder kept in any place other than as above in this section mentioned shall be deemed to be kept in an unauthorized place.

Where any gunpowder is kept in an unauthorized place—

(1.) All or any part of the gunpowder found in such place may be forfeited; and

(2.) The occupier of such place, and also the owner of, or other person guilty of keeping the gunpowder, shall each be liable to a penalty not exceeding two shillings for every pound of gunpowder so kept.

Regulation of Factories and Magazines for Gunpowder

9. In every gunpowder factory and magazine—

(1.) The factory or magazine, or any part thereof, shall not be used for any purpose not in accordance with the license; and Regulation of factories and magazines for gunpowder.

(2.) The terms of the license shall be duly observed, and the manufacture or keeping or any process in or work connected with the manufacture or keeping of gunpowder shall not be carried on except in accordance with those terms; and

(3.) The factory or magazine and every part thereof shall be maintained in accordance with the license; and any material alteration in the factory or magazine by enlarging or adding to the site, or by externally enlarging or adding to any building, or by altering any mound otherwise than by enlargement, or by making any new work, shall not be made except in pursuance of an amending license granted under this Act.

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In the event of any breach (by any act or default) of this section in any factory or magazine.

- (a.) All or any part of the gunpowder or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; (b) and
- (b.) The occupier shall be liable to a penalty not exceeding in the case of the first offence fifty pounds, and in the case of a second or any subsequent offence one hundred pounds, and in addition fifty pounds for every day during which such breach continues.

The occupier of a factory shall not be deemed guilty of a breach of this section for using in a case of emergency, or temporarily, one building or part of a building in which any process of the manufacture is, under the terms of the license, carried on, for another process of the manufacture, if he do not carry on in such building or part more than one process at the same time, and if the quantity of gunpowder or ingredients thereof in such building or part do not exceed the quantity allowed to be therein, or any less quantity allowed to be in the building or part of a building in which such other process is usually carried on; and if upon such use being continued after the lapse of twenty-eight days from the first beginning of such use he send notice of such use to a Government inspector, and the Government inspector do not require the discontinuance of such use.

General rules
for factories
and magazines.

10. In every gunpowder factory and magazine the following general rules shall be observed :

- (1.) In a factory every factory magazine, and in any other magazine every building in which gunpowder is kept, shall be used only for the keeping of gunpowder, and receptacles for or tools or implements for work connected with the keeping of such gunpowder; and
- (2.) The interior of every building in which any process of the manufacture is carried on or in which gunpowder or any ingredients thereof, either mixed or partially mixed, are kept, or in the course of manufacture are liable to be (in this Act referred to as a danger building), and the benches, shelves, and fittings in such building (other than machinery), shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel in such manner, and the detaching of any grit, iron, steel, or similar substance in such manner, as to come into contact with the gunpowder or ingredients thereof in such building, and such interior, benches, shelves, and fittings shall, so far as is reasonably practicable, be kept free from grit and otherwise clean; and
- (3.) Every factory magazine and expense magazine in a factory, and every danger building in a magazine, shall have attached thereto a sufficient lightning conductor, unless, by reason of the construction by excavation or the position of such magazine or building, or otherwise, the Secretary of State considers a conductor unnecessary, and every danger building in a factory shall, if so required by the Secretary of State, have attached thereto a sufficient lightning conductor; and
- (4.) Charcoal, whether ground or otherwise, and oiled cotton, oiled rags, and oiled waste, and any articles whatever liable to spontaneous ignition, shall not be taken into any danger building, except for the purpose of immediate supply and work or immediate use in such building, and upon the cessation of such work or use shall be forthwith removed; and

(b) See *McCallum*, 9 M. 46.

- (5.) Before repairs are done to or in any room in or other part of a danger building, that room or part shall, so far as practicable, be cleaned by the removal of all gunpowder, and wholly or partly mixed ingredients thereof, and the thorough washing out of such room or part; and such room or part of the building after being so cleaned shall not be deemed to be a danger building within the meaning of these rules until gunpowder or the wholly or partly mixed ingredients thereof are again taken into it; and
- (6.) There shall be constantly kept affixed in every danger building, either outside or inside, in such manner as to be easily read, a statement of the quantities of gunpowder or ingredients allowed to be in the building, and a copy of these rules, and of any other part of this Act required by the Secretary of State to be affixed, and of such part of the license and special rules made under this Act as apply to the building; and with the addition in a factory of the name of the building, or words indicating the purpose for which it is used; and
- (7.) All tools and implements used in any repairs to or in a danger building shall be made only of wood or copper or brass or some soft metal or material, or shall be covered with some safe and suitable material; and
- (8.) Due provision shall be made, by the use of suitable working clothes without pockets, suitable shoes, searching, and otherwise, or by some of such means, for preventing the introduction into any danger building of fire, lucifer matches, or any substance or article likely to cause explosion or fire, and for preventing the introduction of any iron, steel, or grit into any part of a danger building where it would be likely to come into contact with gunpowder or the wholly or partly mixed ingredients thereof; but this rule shall not prevent the introduction of an artificial light of such construction, position, or character as not to cause any danger of fire or explosion; and
- (9.) No person shall smoke in any part of the factory or magazine, except in such part (if any) as may be allowed by the special rules; and
- (10.) Any carriage, boat, or other receptacle in which gunpowder, or the wholly or partly mixed ingredients thereof, are conveyed from one building to another in a factory or magazine, or from any such building to any place outside of such factory or magazine, shall be constructed without any exposed iron or steel in the interior thereof, and shall contain only the gunpowder and ingredients, and shall be closed or otherwise properly covered over; and the gunpowder and ingredients shall be so conveyed with all due diligence, and with such precautions and in such manner as will sufficiently guard against any accidental ignition; and
- (11.) A person under the age of sixteen years shall not be employed in or enter any danger building, except in the presence and under the supervision of some grown-up person; and
- (12.) In a factory the ingredients in course of manufacture into gunpowder shall be removed with all due diligence from each working building so soon as the process connected with those ingredients which is carried on in such building is completed, and all finished gunpowder shall with all due diligence either be removed to a factory magazine, or sent away immediately from the factory, and such ingredients and gunpowder shall be loaded and unloaded with all due diligence; and

- Sect. 10.** (13.) In a factory all ingredients to be made or mixed into gunpowder shall, before being so made or mixed, be carefully sifted, for the purpose of removing therefrom, so far as practicable, all dangerous foreign matter.

The Secretary of State may, from time to time, by order, make, and when made rescind and alter, such modifications in the foregoing general rules as may appear to him to be necessary for adapting the same to floating magazines, and such modifications shall have effect as if they were contained in this section.

In the event of any breach (by any act or default) of the general rules in any factory or magazine,—

- (a.) All or any part of the gunpowder or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and
- (b.) The occupier shall be liable to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues.

CONSUMERS' STORES FOR GUNPOWDER

Regulation of Stores

General rules for stores. 17. In every gunpowder store the following general rules shall be observed; that is to say,

- (1.) The provisions of an Order in Council relating to stores, so far as they apply to such store, shall be duly observed;
- (2.) There shall not be at the same time in the store an amount of gunpowder exceeding the amount specified in the licence; and
- (3.) The store shall be used only for the keeping of gunpowder, and receptacles for or tools or implements for work connected with the keeping of such gunpowder; and
- (4.) The interior of the store, and the benches, shelves, and fittings therein, shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel and the detaching of any grit, iron, steel, or similar substance, in such manner as to come into contact with the gunpowder, and such interior, benches, shelves, and fittings shall, so far as is reasonably practicable, be kept free from grit, and otherwise clean; and
- (5.) The store shall have attached thereto a sufficient lightning conductor, unless it is made by excavation or is licensed for less than one thousand pounds of gunpowder; and
- (6.) Before repairs are done to or in any part of a store, the store shall, so far as practicable, be cleaned by the removal of all gunpowder and the thorough washing out of the store; and after such cleaning, these rules shall cease to apply to the store until gunpowder is again taken there; and
- (7.) Except after such cleaning, all tools and implements used in or in any repairs to the store shall be made only of wood, copper, or brass, or some soft metal or material, or shall be covered with some safe and suitable material; and
- (8.) Due provision shall be made, by the use of suitable working clothes without pockets, suitable shoes, searching, and otherwise, or by some of such means, for preventing the introduction into the store of fire,

lucifer matches, or any substance or article likely to cause explosion or fire, or any iron, steel, or grit; but this rule shall not prevent the introduction of an artificial light of such construction, position, or character as not to cause any danger of fire or explosion; and

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- (9.) No person shall smoke in any part of the store; and
- (10.) A person under the age of sixteen years shall not be employed in or enter the store, except in the presence and under the supervision of some grown-up person.

In the event of any breach (by any act or default) of the general rules in any store,—

- (a.) All or any part of the gunpowder in respect to which or being in the store when the offence was committed may be forfeited; and
- (b.) The occupier shall be liable to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues.

RETAIL DEALING WITH GUNPOWDER

Regulation of Registered Premises

22. The following general rules shall be observed with respect to registered premises: (c)

General rules
for registered
premises.

- (1.) The gunpowder shall be kept in a house or building, or in a fire-proof safe, such safe, if not within a house or building, to be at a safe distance from any highway, street, public thoroughfare, or public place; and
- (2.) The amount of gunpowder on the same registered premises shall not—
 - (a.) If it is kept in a substantially constructed building exclusively appropriated for the purpose and detached from a dwelling-house, or in a fire-proof safe outside a dwelling-house, and detached therefrom, and at a safe distance from any highway, street, public thoroughfare, or public place, exceed two hundred pounds; and
 - (b.) If it is kept inside a dwelling-house, or in any building other than as last aforesaid, exceed fifty pounds, unless it is kept in a fire-proof safe within such house or building, in which case the amount shall not exceed one hundred pounds; and
- (3.) An article or substance of an explosive or highly inflammable nature shall not be kept in a fire-proof safe with the gunpowder, and in every case shall be kept at a safe distance from the gunpowder or the safe containing the same; and
- (4.) Neither the building exclusively appropriated for the purpose of keeping the gunpowder nor the fire-proof safe shall have any exposed iron or steel in the interior thereof; and
- (5.) All gunpowder exceeding one pound in amount shall be kept in a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping.

In the event of any breach (by any act or default) of such general rules in any registered premises,—

- (a.) All or any part of the gunpowder in respect to which, or being in any
- (c) By s. 21 premises may be registered with the local authority.

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house, building, place, safe, or receptacle in respect to which, the offence was committed may be forfeited; and

- (b.) The occupier shall be liable to a penalty not exceeding two shillings for every pound of gunpowder in respect of which, or being on the premises in which, the offence was committed.

Supplemental Provisions

Precautions
against fire or
explosion to be
taken by
occupier.

23. The occupier of every factory, magazine, store, and registered premises for gunpowder, and every person employed in or about the same, shall take all due precaution for the prevention of accidents by fire or explosion in the same, and for preventing unauthorized persons having access to the factory, magazine, or store, or to the gunpowder therein or in the registered premises, and shall abstain from any act whatever which tends to cause fire or explosion and is not reasonably necessary for the purpose of the work in such factory, magazine, store, or premises.

Any breach (by any act or default) of this section in any factory, magazine, store, or registered premises shall be deemed to be a breach of the general rules applying thereto.

Explanation as
to quantities
of gunpowder
allowed in
buildings.

24. Where any provision of this Act limits the quantity of gunpowder or ingredients of gunpowder to be allowed in any building at any one time, all gunpowder and ingredients within the radius of twenty yards from the building and in course either of removal from the building, or of removal to the building for the supply and work thereof, shall be deemed to be in the building:

Provided that, if while the gunpowder or ingredients so in course of removal are within the radius, every machine and manufacturing process in the building is wholly stopped, there may, in addition to the quantity so allowed as aforesaid to be in the building, be within the radius a further quantity of gunpowder and ingredients so in course of removal as aforesaid, not exceeding the quantity specified in that behalf in the license, or in the case of an existing building in a lawfully existing factory for gunpowder ten hundredweight, or any less quantity so allowed as aforesaid to be in the building.

Where any provision of this Act limits the quantity of gunpowder or ingredients of gunpowder to be allowed in any machine at any one time, but does not limit the quantity to be in the building containing such machine, the foregoing provisions of this section shall apply, so far as circumstances admit, as if such machine were a building.

Where the quantity allowed to be in any building is limited to what is required for the immediate supply and work of such building, or by words not specifying the exact quantity, a Government inspector who considers that the quantity in any such building is in excess, may, after hearing the explanation of the occupier, require the occupier to diminish such quantity to the maximum named in the requisition.

The occupier, if he feel aggrieved by such requisition, may require the matter to be referred to arbitration in manner provided by this Act. (d)

The exact quantity to be allowed in such building shall be determined by the requisition, or if the matter is referred to arbitration, by the award.

Adjoining
places occupied
together to be
one place.

27. For the purposes of the provisions of this Act with respect to the manufacture and keeping of gunpowder, all buildings and places adjoining each other and occupied together shall be deemed to be the same factory, magazine,

(d) See s. 25.

store, or premises, and shall accordingly be included in one license or one registration. **Sect. 27.**

29. If the occupier of a store or registered premises dies or becomes bankrupt, or has his affairs liquidated by arrangement, or becomes mentally incapable or otherwise disabled, the person carrying on the business of such occupier shall not be liable to any penalty or forfeiture under this Act for carrying on the business and acting under the license or registration during such reasonable time as may be necessary to allow him to obtain a store license from or to register with the local authority, so that he otherwise conform with the provisions of this Act.

Provision in case of death, etc., of occupier of store or registered premises.

Sale of Gunpowder

30. Gunpowder shall not be hawked, sold, or exposed for sale upon any highway, street, public thoroughfare, or public place. **Restriction on sale of gunpowder in highways, etc.**

If any section is hawked, sold, or exposed for sale in contravention of this section—

- (1.) The person hawking, selling, or exposing for sale the same, shall be liable to a penalty not exceeding forty shillings; and
- (2.) All or any part of the gunpowder which is so hawked or exposed for sale, or is found in the possession of any person convicted under this section, may be forfeited.

31. Gunpowder shall not be sold to any child apparently under the age of thirteen years; and any person selling gunpowder in contravention of this section shall be liable to a penalty not exceeding five pounds. **Penalty for sale of gunpowder to children.**

32. All gunpowder exceeding one pound in weight, when publicly exposed for sale or sold, shall be in a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping, and (except when the same is sold to any person employed by or on the property occupied by the vendor for immediate use in the service of the vendor or on such property) the outermost receptacle containing such gunpowder shall have affixed the word "gunpowder" in conspicuous characters by means of a brand or securely attached label, or other mark. **Sale of gunpowder to be in closed packages labelled.**

If any gunpowder is sold or exposed for sale in contravention of this section—

1. The person selling or exposing for sale the same shall be liable to a penalty not exceeding forty shillings; and
2. All or any part of the gunpowder so exposed for sale may be forfeited.

Conveyance of Gunpowder

33. The following general rules shall be observed with respect to the packing of gunpowder for conveyance: **General rules as to packing of gunpowder for conveyance.**

1. The gunpowder, if not exceeding five pounds in amount, shall be contained in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping; and
2. The gunpowder, if exceeding five pounds in amount, shall be contained either in a single package or a double package. A single package shall be a box, barrel, or case of such strength, construction, and character as may be for the time being approved by the Government inspector as being of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape.

Sect. 33.

If the gunpowder is packed in a double package the inner package shall be a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping, and the outer package shall be a box, barrel, or case of wood or metal or other solid material, and shall be of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape; and

3. The interior of every package, whether single or double, shall be kept free from grit and otherwise clean; and
4. Every package, whether single or double, when actually used for the package of gunpowder, shall not be used for any other purpose; and
5. There shall not be any iron or steel in the construction of any such single package or inner or outer package, unless the same is effectually covered with tin, zinc, or other material; and
6. The amount of gunpowder in any single package, or if there is a double package in any one outer package, shall not exceed one hundred pounds, except with the consent of and under conditions approved by a Government inspector; and
7. On the outermost package there shall be affixed the word "gunpowder" in conspicuous characters by means of a brand or securely attached label or other mark.

In the event of any breach (by any act or default) of any general rule in this section, the gunpowder in respect of which the breach is committed may be forfeited, and the person guilty of such breach shall be liable to a penalty not exceeding twenty pounds.

The Secretary of State may from time to time make, and when made, repeal, alter, and add to, rules for the purpose of rescinding, altering, or adding to the general rules contained in this section, and the rules so made by the Secretary of State shall have the same effect as if they were enacted in this section.

34. [Byelaws by harbour authority as to conveyance, loading, etc. of gunpowder.]

In the event of any breach of a byelaw under this section in the case of any ship, boat, carriage, or gunpowder, whether there has or has not been any conviction for such breach, it shall be lawful for the harbour-master, or other officer named in the byelaws, or any person acting under the orders of the harbour authority, to cause such ship, boat, carriage, or gunpowder, at the expense of the owner thereof, to be removed to such place or otherwise dealt with in such manner as may be in conformity with the byelaws; and all expenses incurred in such removal may be recovered in the same manner as a penalty under this section; and any person resisting such harbour-master or officer or other person in such removal shall be liable to the same penalties as a person is liable to for obstructing the harbour-master in the execution of his duty.

On any part of the coast of the United Kingdom or in any tidal water for which there is no harbour authority, the Board of Trade may, if they think it expedient, make byelaws under this section for that part or water as if it were a harbour and they were the harbour authority, and such byelaws shall be deemed to have been made by a harbour authority with the sanction of the Board of Trade; and they may by such byelaws define the area within which such byelaws are to be observed, and the authorities and officers by whom such byelaws are to be enforced and carried into effect within such area; and every such authority and officer shall for the purposes of this Act, other than making

byelaws or assenting to a site for a new factory or magazine, have the same power within the said area as a harbour authority and an officer of a harbour authority have respectively under this Act in a harbour. (e) Sect. 34.

PART II

LAW RELATING TO OTHER EXPLOSIVES

Application of Part I. to other Explosives

39. Subject to the provisions hereafter in this part of this Act contained, Part One of this Act relating to gunpowder shall apply to every other description of explosive, in like manner as if those provisions were herein re-enacted with the substitution of that description of explosive for gunpowder. Part I. relating to gunpowder applied to other explosives.

40. The following modifications and additions shall be made in and to Part One of this Act as applied to explosives other than gunpowder: Modification of Part I. as applied to explosives other than gunpowder.

- (1.) The draft license for a factory or magazine submitted by an applicant to the Secretary of State shall specify such particulars as the Secretary of State may require; and
- (2.) The prescribed general rules shall be substituted for the general rules in Part One of this Act relating to factories, magazines, stores, and registered premises respectively; but no such general rule shall require the removal of any building or work in use at the date of the Order in Council by which such rule is made;
- (3.) The Secretary of State may from time to time alter the general rules relating to packing contained in Part One of this Act for the purpose of adapting the same to the packing of any explosive other than gunpowder; and
- (4.) For the maximum amount limited by Part One of this Act to be kept for private use and not for sale, or in a store, and for the minimum amount limited by Part One of this Act to be exposed for sale or sold otherwise than in a substantial case, box, canister, or other receptacle as therein mentioned, there shall be substituted in the case of explosives other than gunpowder the following amounts; namely,
 - (a.) Where such explosive consists of safety cartridges made with gunpowder, an amount containing not more than five times the maximum or minimum amount of gunpowder, as the case may be, above mentioned; and
 - (b.) In the case of any other explosive, the prescribed (f) amount; and
- (5.) Two or more descriptions of explosives shall not be kept in the same store or registered premises, except such descriptions as may be prescribed in that behalf; and, when so kept, shall be kept subject to the prescribed conditions and restrictions; and
- (6.) Where any explosive, other than gunpowder, is allowed to be kept in the same store or registered premises with gunpowder, the maximum amount of gunpowder to be kept therein shall be the prescribed amount in lieu of the amount fixed by Part One of this Act; and
- (7.) Where any explosive, other than gunpowder, is allowed to be kept in the same magazine, store, or registered premises with gunpowder,

(e) As to public wharves, see s. 36.

(f) See s. 108.

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the prescribed general rules shall be observed instead of the general rules in Part One of this Act; and

- (8.) There shall be on the outermost package containing the explosive in lieu of the word "gunpowder" the name of the explosive, with the addition of the word "explosive," and if such name is materially false the person selling or exposing for sale such explosive, and also the owner of the explosive, shall be liable to a penalty not exceeding fifty pounds:
- (9.) With respect to the importation from any place out of the United Kingdom of either dynamite or gun-cotton, or any explosive (other than gunpowder, cartridges made with gunpowder, percussion caps, fireworks, and any prescribed explosive), the following provisions shall have effect; that is to say,
 - (a.) The owner and master of any ship having on board any such explosive shall not permit the same to be unloaded and delivered to any person who does not hold a license to import the same (in this Act called an importation license) from the Secretary of State, and any transshipment shall for the purpose of this section be deemed to be delivery; and
 - (b.) The Secretary of State may grant an importation license for any such explosive, and may annex thereto any prohibitions and restrictions with respect to the composition and quality of the explosive, and the unloading, landing, delivery, and conveyance thereof, and such further provisions and restrictions as he may think fit, for the protection of the public from danger; and
 - (c.) The license shall be of such duration as the Secretary of State may fix, and shall be available only for the person named in the license; and
 - (d.) In the event of any breach (by any act or default) of the provisions of this section with respect to the importation of an explosive, or of the provisions of any importation license, all or any part of the explosive with respect to which such breach is committed, or being in any ship or boat in connexion with which such breach is committed, may be forfeited; and the owner and master of such ship or boat, and the licensee or person to whom the explosive is delivered, shall each be liable to a penalty not exceeding one hundred pounds, and to a further penalty not exceeding two shillings for every pound of such explosive; and
 - (e.) The Commissioners of Customs and their officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article on the importation of which restrictions are for the time being imposed by the law relating to the Customs, and the ship containing the same, and the enactments for the time being in force relating to the Customs or any such article or ship shall apply accordingly.

Exemption
of safety
cartridges for
private use.

41. Nothing in this Act shall apply to the filling or conveying, for private use and not for sale, of any safety cartridges to the amount allowed by this Act to be kept for private use.

42. Section twenty-nine of the Passengers Act, 1855, and sections twenty-three to twenty-seven, both inclusive, of the Merchant Shipping Act, 1873,

shall apply to every explosive within the meaning of this Act in like manner as they apply to gunpowder. (g) Sect. 42.

Specially dangerous Explosives

43. Notwithstanding anything in this Act, Her Majesty from time to time, by Order in Council, may prohibit, either absolutely, or except in pursuance of a license of the Secretary of State under this Act, or may subject to conditions or restrictions the manufacture, keeping, importation from any place out of the United Kingdom, conveyance, and sale, or any of them, of any explosive which is of so dangerous a character that, in the judgment of Her Majesty, it is expedient for the public safety to make such order: Power to prohibit manufacture, importation, storage, and carriage of specially dangerous explosives.

Provided that such order shall not absolutely prohibit anything which may be lawfully done in pursuance of any continuing certificate under this Act.

Any explosive manufactured or kept in contravention of any such order shall be deemed to be manufactured or kept, as the case may be, in an unauthorized place.

Any explosive conveyed in contravention of any such order shall be deemed to be conveyed in contravention of a bylaw made under this Act with respect to the conveyance of explosives.

If any explosive is imported or sold in contravention of any such order,—

1. All or any part of such explosive may be forfeited; and
2. The owner or master of the ship in which it was imported shall be liable to a penalty not exceeding ten shillings for every pound of such explosive brought in the ship; and
3. The person to whom it was delivered and the person selling the same shall be liable to a penalty not exceeding ten shillings for every pound of such explosive delivered or sold or found in his possession.

The Commissioners of Customs and their officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article prohibited to be imported by the law relating to the Customs, and the ship containing the same, and the enactments for the time being in force relating to the Customs and any such article or ship shall apply accordingly.

Provisions in favour of certain Manufacturers and Dealers

44. The occupier of a factory for any explosive shall not be required by this Act to take out a factory license for making up on such factory the explosive made thereon into cartridges or charges for cannon or blasting not containing within themselves their own means of ignition. Provision in favour of makers, etc., of blasting cartridges.

The occupier of any magazine, store, or registered premises for keeping any explosive may keep that explosive when made up into such cartridges or charges as above in this section mentioned, as if it were not so made up, and the provisions of this Act with respect to the keeping of any explosive shall apply to the keeping of that explosive when made up into the said cartridges or charges, in like manner as if the explosive were not so made up.

45. The occupier of a factory for any explosive who manufactures a new explosive or new form of explosive similar to the one specified in his license, shall not be deemed to have manufactured the same in an unauthorized place if he manufacture the same on a small scale, and exclusively for the purpose Provision in favour of makers of new explosives for experiment.

(g) See now 57 & 58 Vict. c. 60, s. 301.

Sect. 45. of trial and not for sale, and he send notice of the same, as soon as he has manufactured it, to the Secretary of State, and if he observe the provisions of this Act, so far as they are applicable.

Provision in favour of gun-makers, etc., making cartridges. 46. The occupier of a magazine, store, or registered premises for any explosive shall not be required by this Act to take out a factory license by reason that in connexion with such magazine, store, or premises he fills for sale or otherwise any cartridge for small arms with the said explosive, so that he observe the following regulations; namely,

- (1.) There shall not be in the room in which such filling is being carried on more than five pounds of gunpowder, or the prescribed amount of any other explosive, except it is made up into safety cartridges; and
- (2.) Any work unconnected with the making of the cartridges shall not be carried on in the room while such filling is being carried on; and
- (3.) There shall not be in the room while such filling is being carried on any fire nor any artificial light, except a light of such construction, position, or character as not to cause any danger of fire or explosion; and
- (4.) In the case of a magazine or store, the room in which the filling is carried on shall be detached from the magazine or store, but in the immediate neighbourhood thereof, and at such distance therefrom as may be specified in the case of a magazine by the license, and in the case of a store by an Order in Council relating to stores; and
- (5.) The occupier shall give notice in the case of a magazine to the Secretary of State, and in the case of a store or registered premises to the local authority, that he intends to carry on such filling of cartridges as is allowed by this section.

Provided that this section shall not, except with the consent of the Secretary of State, apply to any magazine or store for which a continuing certificate has been obtained under this Act, which consent the Secretary of State, if satisfied that the filling of cartridges in accordance with this section ought (due regard being had to the safety of the public) to be allowed, may grant either absolutely or upon such conditions as he may, under the special circumstances of the case, think expedient to secure the safety of the public.

The regulations in this section and any conditions so made by the Secretary of State as last aforesaid, shall be deemed to be general rules under this Act relating to the magazine, store, and registered premises respectively, and the breach of them shall be punished accordingly.

Provision in favour of owners of mines and quarries, as to making charges, etc., for blasting.

47. The occupier of any magazine or store for any explosive shall not be required by this Act to take out a factory license by reason that, in connexion with such magazine or store, he, by filling cartridges, making charges, drying, sifting, fitting, or otherwise adapts or prepares the said explosive for use exclusively in his mine or quarry, or in some excavation or work carried on by him or under his control, so that he observe the following regulations; namely,

- (1.) There shall not be in the workshop in which such adaptation or preparation is carried on more than one hundred pounds of gunpowder or the prescribed (*h*) amount of any other explosive; and
- (2.) Any work unconnected with such adaptation or preparation shall not be carried on in the said workshop while such adaptation or preparation is being carried on; and
- (3.) The said workshop shall be detached from the magazine or store, but

(*h*) See s. 103.

in the immediate neighbourhood thereof, and such distance therefrom as may be specified, in the case of a magazine by the license, and in the case of a store by an Order in Council relating to stores; and

- (4.) An explosive of one description shall not be converted into an explosive of another description, and shall not be unmade or resolved into its ingredients; and
- (5.) The occupier shall give notice in the case of a magazine to the Secretary of State, and in the case of a store to the local authority, that he intends to carry on such adaptation or preparation as is allowed by this section.

Provided that this section shall not, except with the consent of the Secretary of State, apply to any magazine or store for which a continuing certificate has been obtained under this Act, which consent the Secretary of State, if satisfied that the adaptation or preparation in accordance with this section ought (due regard being had to the safety of the public) to be allowed, may grant either absolutely or upon such conditions as he may, under the special circumstances of the case, think expedient to secure the safety of the public.

The regulations in this section, and any conditions so made by the Secretary of State as last aforesaid, shall be deemed to be general rules under this Act relating to the magazine and store respectively, and the breach of them shall be punished accordingly.

The following general rules shall apply as if the said workshop were a danger building, that is to say, if the adaptation or preparation carried on is of gunpowder only, the general rules with respect to a factory in Part One of this Act, and in any other case the prescribed general rules; and the breach of such general rules shall be punished in like manner as the breach of general rules with respect to a factory.

48. A firework factory shall not be deemed to be a small firework factory for the purposes of this Act if there is upon the same factory at the same time—

- (a.) More than one hundred pounds of any explosive other than manufactured fireworks and coloured fires and stars; or
- (b.) More than five hundred pounds of manufactured fireworks, either finished or partly finished; or
- (c.) More than twenty-five pounds of coloured fires or stars, not made up into manufactured fireworks.

Provision in favour of small firework manufacturer who may obtain a license from the local authority.

The occupier of a small firework factory shall not be required to obtain a license under Part One of this Act for such factory if he has obtained a license from the local authority under this part of this Act.

A person having such license from the local authority (i) who manufactures an explosive (other than nitro-glycerine or any prescribed (j) explosive) for the purpose only of the manufacture of coloured fires or a manufactured firework in accordance with this Act, and does not sell the same except in the form of coloured fires packed in the manner required by this Act, or of a manufactured firework, shall not be deemed to manufacture an explosive in an unauthorized place.

Accidents

63. [Notice to be given of accidents connected with explosive to Secretary of State.]

(i) See s. 49.

(j) See s. 108.

Sect. 64.

Reconstruction
of buildings
destroyed by
accident.

64. Where an accident by explosion or fire has occurred in, and wholly or partly destroyed a factory magazine, or any magazine or store, the factory magazine, magazine, or store shall not be reconstructed, and any further supply of an explosive shall not be put therein, except with the permission of the Secretary of State; and any explosive put therein in contravention of this section shall be deemed to be kept in an unauthorized place, and the offence may be punished accordingly:

Provided, that this enactment shall not prevent the reconstruction of a factory magazine in any lawfully existing factory upon such site in the factory, and with such precautions as may seem reasonable to the Secretary of State, due regard being had to the working of the factory as well as to the safety of the public and of the persons employed therein.

Where an accident by explosion or fire in a factory has wholly or partly destroyed any building of such factory as to which a Government inspector has previously to the accident sent to the occupier a notice that the building is unduly near to some building or work outside the factory, such building shall be reconstructed only upon such site in the factory and with such precautions as may seem reasonable to the Secretary of State, due regard being had to the working of the factory as well as to the safety of the public and of the persons employed therein.

Where an accident by explosion or by fire in a factory has wholly or partly destroyed two or more buildings in such factory, not more than one of such buildings shall be reconstructed except with the permission of the Secretary of State: Provided that this enactment shall not apply to any buildings in a lawfully existing factory, if either both or all such buildings are incorporating mills, or if as regards any other buildings a Government inspector has not previously to the accident sent to the occupier a notice that such buildings are unduly near to each other.

Where a building is constructed on a different site in pursuance of this section, the Secretary of State shall cause the necessary alterations to be made in the license, and such alterations shall be deemed to be part of the license.

The reconstruction of any building in contravention of this section shall be deemed to be a breach of the terms of the license, and shall be punished accordingly.

PART IV**SUPPLEMENTAL PROVISIONS, LEGAL PROCEEDINGS, EXEMPTIONS, AND DEFINITIONS***Supplemental Provisions*

Penalty on and
removal of
trespassers.

77. Any person who enters without permission or otherwise trespasses upon any factory, magazine, or store, or the land immediately adjoining thereto which is occupied by the occupier of such factory, magazine, or store, or on any wharf for which byelaws are made by the occupier thereof under this Act, shall for every such offence, if not otherwise punishable, be liable to a penalty not exceeding five pounds, and may be forthwith removed from such factory, magazine, store, land, or wharf, by any constable, or by the occupier of such factory, magazine, store, or wharf, or any agent or servant of or other person authorized by such occupier.

Any person other than the occupier of or person employed in or about any

factory, magazine, or store who is found committing any act which tends to cause explosion or fire in or about such factory, magazine, or store, shall be liable to a penalty not exceeding fifty pounds.

Sect. 77.

The occupier of any such factory, magazine, store, or wharf shall post up in some conspicuous place or places a notice or notices warning all persons of their liability to penalties under this section; but the absence of any such notice or notices shall not exempt a person from a penalty under this section.

80. If any person throw, cast, or fire any fireworks in or into any highway, street, thoroughfare, or public place, he shall be liable to a penalty not exceeding five pounds.

Penalty for throwing fireworks in thoroughfare.

86. Where any enactment refers to any power of searching for gunpowder, or to any provisions of an Act of the twelfth year of King George the Third, chapter sixty-one, or of any Act repealed by this Act relative to the search for gunpowder, such enactment shall be deemed to refer to the provisions of this Act with respect to the search for and seizure, detention, and removal of an explosive by a Government inspector.

Construction of enactments referring to powers of searching for gunpowder.

Legal Proceedings

87. Where any offence under this Act for which the occupier of any factory, magazine, store, or registered premises is liable to a penalty or forfeiture has in fact been committed by some other person, such other person shall be liable to a penalty not exceeding twenty pounds.

Where such occupier is charged with an offence so committed by some other person, the occupier shall be exempt from any penalty and forfeiture upon proving that he had supplied proper means and issued proper orders for the observance and used due diligence to enforce the observance of this Act, and that the offence in question was actually committed by some other person without his connivance, and if the actual offender be alive, that he has taken all practicable means in his power to prosecute such offender to conviction.

Exemption of occupier from penalty upon proof of another being real offender.

Where a Government inspector, or an officer of the local authority, or the local authority, is satisfied, before instituting a proceeding for any offence under this Act against an occupier, that such occupier, if such proceeding were instituted against him, would, under the foregoing provisions of this section, upon taking all practicable means in his power to prosecute the actual offender to conviction, be exempt from any penalty and forfeiture, and the occupier gives all facilities in his power for proceeding against and convicting the person whom the inspector, officer, or local authority believes actually to have committed the offence, the inspector, officer, or local authority shall proceed against that person in the first instance, without first proceeding against the occupier.

The occupier or other defendant, when charged in respect of any offence by another person, may, if he think fit, be sworn and examined as an ordinary witness in the case.

Where any offence under this Act for which any warehouseman, carrier, occupier of a wharf or dock, or owner or master of any ship, boat, or carriage, is liable to a penalty or forfeiture, has in fact been committed by some other person, this section shall apply in like manner as if the warehouseman, carrier, occupier of a wharf or dock, owner, or master were such an occupier as above in this section mentioned.

88. Where a carrier or owner or master of a ship or boat is prevented from complying with this Act by the wilful act, neglect, or default of the consignor

Exemption of carrier and owner and

Sect. 88.

master of ship
where consignee, etc.,
in fault.

or consignee of the explosive, or other person, or by the improper refusal of the consignee or other person to accept delivery of the explosive, such consignor, consignee, or other person who is guilty of such wilful act, neglect, default, or refusal shall be liable to the same penalty to which the carrier, owner, or master is liable for a breach of this Act, and his conviction shall exempt the carrier, owner, or master from any penalty or forfeiture under this Act.

Exemptions and Savings

Exemption of
Government
factories, etc.,
from the Act.

97. This Act shall not apply—

- (1.) To any factory, magazine, store, premises, wharf, place, or explosive under the control of the Secretary of State, the Commissioners of the Admiralty, or other department of the Government, or otherwise held for the service of the Crown, or to the manufacture, keeping, or importation of such explosive; or
- (2.) To any of Her Majesty's ships, boats, or carriages; or
- (3.) To the keeping or making up, or adapting for use of any explosive issued by or by the authority of a Secretary of State for the use of any volunteer corps or administrative regiment, or by or by the authority of the Commissioners of the Admiralty for the use of any force under the control of those commissioners, so far as such explosive is kept, made up, and adapted for use in accordance with the regulations of the Secretary of State or the said commissioners, as the case may be; or
- (4.) To any storehouse appointed for receiving any such explosive as last above mentioned in pursuance of section twenty-six of the Volunteer Act, 1863, and any Act amending the same, (*k*) or otherwise, if such storehouse is approved by the Secretary of State or the Commissioners of the Admiralty, as the case may be, as a fit place for the storing of such explosive, and is managed in accordance with the regulations of a Secretary of State or such Commissioners for the management of such storehouses, or for the management of the like storehouses appointed for the use of Her Majesty's army or navy; or
- (5.) To the conveyance of any explosive under the control of a Secretary of State, the Commissioners of the Admiralty, or other department of the Government, or to the conveyance of any explosive otherwise held for the service of the Crown when the same is being conveyed in accordance with the regulations of a Secretary of State or the Commissioners of the Admiralty or other department of the Government;

26 & 27 Vict.
c. 65.

Provided that every person who enters without permission or otherwise trespasses upon any factory, magazine, or storehouse above in this section mentioned or the land immediately adjoining thereto in the occupation of the Crown or of a Secretary of State or the Commissioners of the Admiralty or other department of the Government, or if it adjoin such a storehouse in the occupation of the officer or person in whom such storehouse is vested, and any person found committing any act tending to cause explosion or fire in or about such factory, magazine, or storehouse, shall be liable to the like penalty, and may be removed and arrested in like manner as if this section had not been

(*k*) See now The Territorial and Reserve Forces Act, 1907.

enacted and this Act applied to such factory, magazine, or storehouse, as above in this section mentioned.

Sect. 97.

98. This Act shall not apply—

Saving for
rocket and
fog stations.

- (1.) To the keeping of any rockets for use in any apparatus for saving life, kept under the control of the Commissioners of the Admiralty or the Board of Trade; or
- (2.) To the keeping of any explosive kept for the purpose of signalling at or near a station on the sea coast, under the control of any general lighthouse authority, as defined by the Merchant Shipping Act, 1854. (*l*)

99. Nothing in this Act with respect to the keeping of gunpowder shall apply to any vessel for the storage of gunpowder moored in the River Mersey at a place appointed either before or after the passing of this Act, in pursuance of the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter sixty-seven, intituled “An Act to repeal so much of an Act of the twelfth year of King George the Third relating to the making, keeping, and carriage of gunpowder, as exempts therefrom certain gunpowder magazines and stores near Liverpool, and to make certain temporary provisions with regard to the said magazines and stores;” nor shall anything in this Act affect the powers of the Commissioners of the Admiralty, or a Secretary of State, or the Commissioners for the Conservancy of the River Mersey under the said Act: Exemption of
magazines in
the Mersey.

Provided that any explosive other than gunpowder shall not be kept in such vessel except in pursuance of a license under this Act.

100. Nothing in this Act shall render liable to any penalty or forfeiture the owner or master of any ship or boat, or any carrier or warehouseman, or the person having charge of any carriage, for any act done in breach of this Act, if he prove that by reason of stress of weather, inevitable accident, or other emergency, the doing of such act was, under the circumstances, necessary and proper. Saving for
master of ship
and carrier in
case of emer-
gency.

101. Where any gunpowder, rockets, or other explosives are on board any ship in pursuance of the provisions of the Merchant Shipping Act, 1854, and the Acts amending the same, or any order or regulation made under any of those Acts, nothing in this Act shall apply to such gunpowder, rockets, or explosive, except that the conveyance and keeping thereof on board the ship or elsewhere while the ship is in harbour shall be subject to the byelaws under this Act, and byelaws under this Act may be made for regulating such conveyance and keeping. (*m*) Saving for
rockets, gun-
powder, etc.,
on board ship.

102. This Act shall not, save as is herein expressly provided, exempt any person from any action or suit in respect of any nuisance, tort, or otherwise, which might, but for the provisions of this Act, have been brought against him. Saving clause
as to liability.

This Act shall not exempt any person from any indictment or other proceeding for a nuisance, or for an offence which is indictable at common law, or by any Act of Parliament other than this Act, so that no person be punished twice for the same offence. . . .

A continuing certificate granted under this Act shall not make lawful any factory, magazine, or store, or any part thereof, which immediately before the passing of this Act was unlawful.

103. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of Parliament, but the Secretary of State may, on the application of any Powers of Act
cumulative,
with power to

(*l*) See now 57 & 58 Vict. c. 60, s. 634.

(*m*) 57 & 58 Vict. c. 60, s. 427.

Sect. 103. local authority, or of any council of a borough, or any urban sanitary authority, or on the application of any persons making, keeping, importing, exporting, or selling any explosive within the jurisdiction of any local authority, council, or urban sanitary authority, after notice to such authority, make an order for repealing, altering, or amending all or any of the provisions of any Act of Parliament, charter, or custom respecting the manufacture, keeping, conveyance, importation, exportation, or sale of an explosive, or the powers of such council or authority for regulating the same, or otherwise in relation to an explosive. . . .

make provision
order for repealing
local Acts.

An order under this section may also be made for revoking or altering an order under this section previously made and confirmed by Parliament.

Definitions

Extension of
definition of
explosive to
other explosive
substances.

104. Her Majesty may, by Order in Council, declare that any substance which appears to Her Majesty to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act (subject to such exceptions, limitations, and restrictions as may be specified in the order) shall accordingly extend to such substance in like manner as if it were included in the term explosive in this Act.

Persons carrying
on certain
processes to be
deemed manu-
facturers.

105. Any person who carries on any of the following processes, namely, the process of dividing into its component parts or otherwise breaking up or unmaking any explosive, or making fit for use any damaged explosive, or the process of remaking, altering, or repairing any explosive, shall be subject to the provisions of this Act as if he manufactured an explosive, and the expression "manufacture" shall in this Act be construed accordingly.

Definition and
classification of
explosives by
Order in
Council.

106. It shall be lawful for Her Majesty from time to time, by Order in Council, to define, for the purposes of this Act, the composition, quality, and character of any explosive, and to classify explosives.

Where the composition, quality, or character of any explosive has been defined by an Order in Council, any article alleged to be such explosive which differs from such definition in composition, quality, or character, whether by reason of deterioration or otherwise, shall not be deemed, for the purposes of this Act, to be the explosive so defined.

Definition of
"chief officer
of police."

107. In this Act—

The expression "chief officer of police" means—

- (1.) In the city of London and the liberties thereof, the commissioner of city police; and
- (2.) In the metropolitan police district, the commissioner or any assistant commissioner or any district superintendent of metropolitan police; and
- (3.) Elsewhere the chief constable, or head constable, or other officer, by whatever name called, having the chief command of the police in the police district in reference to which such expression occurs:

"Police
district."

The expression "police district" means—

- (1.) The city of London and the liberties thereof; and
- (2.) The metropolitan police district; and
- (3.) Any county, or liberty of a county, borough, town, place, or union, or combination of places maintaining a separate police force; and all the police under one chief constable shall be deemed to constitute one force for the purposes of this section.

Sect. 108.

General
definitions.

103. In this Act, unless the context otherwise requires—

The expression “this Act” includes any licence, certificate, byelaw, regulation, rule, and order granted or made in pursuance of this Act :

The expression “existing” means existing at the passing of this Act :

The expression “person” includes a body corporate :

The expression “occupier” includes any number of persons and a body corporate; and in the case of any manufacture or trade, includes any person carrying on such manufacture or trade :

The expression “master” includes every person (except a pilot) having command or charge of a ship, and in reference to any boat belonging to a ship, means the master of the ship; and when used in reference to any other boat, includes every person having command or charge of such boat :

The expression “magazine” includes any ship or other vessel used for the purpose of keeping any explosive.

The expression “factory magazine” means a building for keeping the finished explosive made in the factory, and includes, if such explosive is not gunpowder, any building for keeping the partly manufactured explosive or the ingredients of such explosive which is mentioned in that behalf in the licence :

The expression “store” means an existing gunpowder store as defined by this Act, or a place for keeping an explosive licensed by a licence granted by a local authority under this Act :

The expression “Secretary of State” means one of Her Majesty’s Principal Secretaries of State :

The expression “warehouseman” includes all persons owning or managing any warehouse, store, wharf, or other premises in which goods are deposited :

The expression “carrier” includes all persons carrying goods or passengers for hire by land or water :

The expression “harbour authority” means any person or body of persons, corporate or unincorporate, being or claiming to be proprietor or proprietors of or intrusted with the duty or invested with the power of improving, managing, maintaining, or regulating any harbour properly so called, whether natural or artificial, and any port, haven, and estuary, or intrusted with the duty of conserving, maintaining, or improving the navigation of any tidal water, and any such harbour, port, haven, estuary, tidal water, and any wharf, dock, pier, jetty, and work, and other area, whether land or water, over which the harbour authority as above defined have control or exercise powers, are in the other portions of this Act included in the expression “harbour” :

The expression “canal company” means any person or body of persons, corporate or unincorporate, being owner or lessee or owners or lessees of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom, constructed or carried on under the powers of any Act of Parliament, or intrusted with the duty of conserving, maintaining, or improving the navigation of any inland water, and every such canal and inland water under the control of a canal company as above defined, and any wharf, dock, pier, jetty, and work in or at which barges do or can ship or unship goods or passengers, and other area, whether land or water, which belong to or are under the control of such canal company, are in the other portions of this Act included in the expression “canal” :

The expression “tidal water” means any part of the sea or of a river within the ebb and flow of the tides at ordinary spring tides :

Sect. 108.

The expression "inland water" means any canal, river, navigation, lake, or water which is not tidal water:

The expression "railway company" means any person or body of persons, corporate or unincorporate, being the owner or lessee or owners or lessees of or working any railway worked by steam or otherwise than by animal power in the United Kingdom, constructed or carried on under the powers of any Act of Parliament and used for public traffic, and every building, station, wharf, dock, and place which belong to or are under the control of a railway company, are in the other portions of this Act included in the expression "railway":

The expression "wharf" includes any quay, landing-place, siding, or other place at which goods are landed, loaded, or unloaded:

The expression "carriage" includes any carriage, waggon, cart, truck, vehicle, or other means of conveying goods or passengers by land, in whatever manner the same may be propelled:

The expression "ship" includes every description of vessel used in sea navigation, whether propelled by oars or otherwise:

The expression "boat" means every vessel not a ship as above defined which is used in navigation in any inland water or any harbour, whether propelled by oars or otherwise:

The expression "safety cartridges" means cartridges for small arms of which the case can be extracted from the small arm after firing, and which are so closed as to prevent any explosion in one cartridge being communicated to other cartridges: . . .

Little goes.

As to persons who agree to pay money or deliver goods on any event relative to games or lotteries known as little goes, it shall and may be lawful for any person whatever to apprehend on the spot any person or persons so offending and to convey or cause them to be conveyed before a justice. (n)

By the Hawkers Act, 1888—

Hawkers.

6. (1.) If any person does any act for which a licence is required by this Act (a.) without having a proper licence in force in that behalf, or (b.) without immediately producing upon demand by any person a proper licence granted to him or to his master and then in force . . . (3.) Any officer or officer of the peace may arrest a person found committing an offence against this section and convey him before a justice. (o)

By the Indecent Advertisements Act, 1889—

Indecent advertisements.

6. Any constable or other peace officer may arrest without warrant any person whom he shall find committing any offence against this Act. (p) The offences are:

(n) 42 Geo. III. c. 119, s. 6.

(o) 51 & 52 Vict. c. 33. By s. 2 "hawker" means any person who travels with a horse or other beast bearing or drawing burden and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods wares or merchandise or exposing samples or patterns of any goods wares or merchandise to be afterwards delivered, and includes any person who travels by any means of locomotion to any place in which

he does not usually reside or carry on business and there sells or exposes for sale any goods wares or merchandise in or at any house shop room booth stall or other place whatever hired or used by him for that purpose. "Officer" means officer of inland revenue. See *Holland v. Hall*, 86 L. T. 355. A travelling auctioneer is within the Act: *Hudson v. Shooter*, 55 J. P. 325.

(p) 52 & 53 Vict. c. 18.

Sect. 6.

Whoever affixes to or inscribes on any house building wall boarding gate fence pillar post board tree or any other thing whatsoever so as to be visible to a person being in or passing along any street public highway or footpath and whoever affixes to or inscribes on any public urinal or delivers or attempts to deliver or exhibits to any inhabitant or to any person being in or passing along any street public highway or footpath or throws down the area of any house or exhibits to public view in the window of any house or shop any picture or printed or written matter which is of an indecent or obscene nature. (q)

Whoever gives or delivers to any other person any such pictures or printed or written matter mentioned in s. 3 of this Act with the intent that the same or some one or more thereof should be affixed inscribed delivered or exhibited as therein mentioned. (r)

By the Vagrant Act, 1824 (5 Geo. IV. c. 83)—

6. It shall be lawful for any person whatever to apprehend any person who shall be found offending against this Act, and forthwith to take and convey him or her before some justice. The offences are: (s)

3. Every person being able wholly or in part to maintain himself or herself or his or her family (t) by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or she, or any of his or her family whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township, or place; (u) every person returning to and becoming chargeable in any parish, township, or place from whence he or she shall have been legally removed by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township or place, thereby acknowledging him or her to be settled in such other parish, township, or place; every petty chapman or pedlar wandering abroad, and trading without being duly licensed, or otherwise authorized by law; every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner; and every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do. (x)

Vagrants.

Persons refusing to maintain themselves and families, or leaving place to which they were removed, and unlicensed pedlars, prostitutes, and beggars.

(q) S. 3.

(r) S. 4. By s. 5 any advertisement relating to syphilis gonorrhœa nervous debility or other complaint or infirmity arising from or relating to sexual intercourse shall be deemed to be printed or written matter of an indecent nature within s. 3 if affixed or inscribed etc. as therein mentioned. See *Dingwall*, 20 R. 16.

(s) By the Children Act, 1908, s. 14, if any person causes or procures any child or young person or having the custody charge or care of a child or young person allows that child or young person to be in any street premises or place for the purpose of begging or receiving alms or of inducing the giving of alms whether or not there is any pretence of singing playing performing offering anything for sale or otherwise he may be arrested. And so may a person wandering from place to

place and taking a child with him if there is reason to believe that he is thereby preventing the child from receiving efficient elementary education: s. 118.

(t) This does not apply in case of desertion by wife: *R. v. Flintan*, 1 B. & A. 227; *Phillips v. S. Dublin*, 1902, 2 I. R. 112; or if there be an offer to support: *Flannagan v. Bishopwearmouth*, 27 L. J. M. C. 46.

(u) 7 & 8 Vict. c. 101, s. 6, renders the mother liable in case of an illegitimate child. But arrest without warrant is not valid in any case: *Horley v. Rogers*, 6 Jur. N. S. 605. Soldiers are not punishable under the section: 44 & 45 Vict. c. 58, s. 145.

(x) This does not apply to persons unless their habit and mode of life is to wander abroad and beg: *Pointon v. Hill*, 12 Q. B. D. 306.

Sect. 4.

Persons committing certain offences shall be deemed rogues and vagabonds.

4. Every person committing any of the offences herein-before mentioned, after having been convicted as an idle and disorderly person; every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of his Majesty's subjects; (y) every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself; every person wilfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition; (z) every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female; every person wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms; every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; every person running away and leaving his wife, or his or her child or children, (a) chargeable, or whereby she or they or any of them shall become chargeable, to any parish, township, or place; every person playing or betting in any street, road, highway, or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance; (b) every person having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling house, warehouse, coach-house, stable, or outbuilding, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument, with intent to commit any felonious act; every person being found in or upon any dwelling house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose; (c) every suspected person or reputed thief, frequenting or loitering about or in (d) any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, (e) or any street, highway, or avenue leading thereto, or any place of

(y) This extends to spirit-rapping: *Monck v. Hilton*, L. R. 2 Ex. D. 268, and astrology: *Penny v. Hanson*, 18 Q. B. D. 478.

(z) Extended to shop windows: 1 & 2 Vict. c. 38, s. 2.

(a) Does not include a deserted married woman: *Peters v. Cowie*, 2 Q. B. D. 131.

(b) Extended to every person playing or betting by way of wagering or gaming in any street road highway or other open and public place or in any open place to which the public have or are permitted to have access at or with any table or instrument of gaming or any coin card token or other article used as an instrument or means of such wagering or gaming at any game or pretended game of chance: 36 & 37 Vict. c. 38, s. 3. Depositing money with a betting agent is not within the Act: *Hirst v. Molesbury*, L. R. 6 Q. B. 130; nor is gaming unless it be at some game or pretended game of chance: *Ridgeway v. Furdale*, 1892, 2 Q. B. 309; *Lester v. Quested*, 85 L. T. 487. A railway carriage is a public place: *Langrish v. Archer*, 10 Q. B. D. 44; and so is a place to which

the public have access though not of right: *Turnbull v. Appleton*, 45 J. P. 469. A *pari mutuel* is an instrument of gaming: *Tollett v. Thomas*, L. R. 6 Q. B. 514. See also 7 Ed. VII. c. 53, s. 81, by which public place is extended to any place of public resort or recreation ground belonging to or under the control of the local authority and any unfenced ground adjoining or abutting upon any street in an urban district.

(c) The purpose must be criminal, not merely immoral: *Hayes v. Stevenson*, 3 L. T. 296. It applies if the person is seen in the house but gets out and is taken on fresh pursuit although he was not seen getting out of the house but was found concealed on other premises near: *R. v. Howarth*, 1 Moo. C. C. 207.

(d) 54 & 55 Vict. c. 69, s. 7.

(e) By the Aliens Act, 1905, 5 Ed. VII. c. 13, s. 7, Any person guilty of an offence under this Act shall . . . if the offence is committed by him as an immigrant or alien be deemed a rogue and vagabond within the meaning of the above Act and be liable to be dealt with accordingly as if the

public resort, (f) or any avenue leading thereto, or any street or any highway, or any place adjacent to a street or highway (g) with intent to commit felony. (h) Sect. 4.

Any police constable who shall see any person throwing any rubbish into any [public gardens or ornamental grounds in cities and boroughs] or trespassing therein or getting over the railings or fence or stealing or damaging the flowers or plants or committing any nuisance therein may apprehend such person. (i) Public gardens.

Where any person is using or carrying a gun (not being a person in the naval military or volunteer (j) service of his Majesty or in the constabulary or other police force using or carrying a gun in the performance of his duty) and fails to produce his gun licence when demanded by any officer of inland revenue or any officer of constabulary or any constable and refuses to declare when required by any such officer his christian and surname and place of residence, it shall be lawful for such officer or constable to arrest such person so refusing and to convey him before a justice. (k) Gun licence.

Any constable may demand the name and address of any person found on any [licensed] premises during the period during which they are required by the provisions of the Licensing Act, 1874, to be closed (l) and if he has reasonable ground to suppose that the name or address given is false may require evidence of the correctness of such name and address and may if such person fail upon such demand to give his name or address or such evidence apprehend him without warrant and carry him as soon as practicable before a justice. (m) All premises in which intoxicating liquors are sold by retail shall be closed as follows: Licensed premises, persons on during hours of closing.

(1.) If situate within the metropolitan district [i.e. the city or any parish or place subject to the (county council) or within 4 miles of Charing Cross]—

(a.) On Saturday night from midnight until 1 o'clock in the afternoon on

offence were an offence under s. 4 of that Act. The offences are: Landing in the United Kingdom from an immigrant ship except at a port at which there is an immigration officer or at any such port without the leave of that officer: s. 1 (1). An immigrant conditionally disembarked shall not be deemed to have landed so long as the conditions are complied with (5.). Any alien found within the United Kingdom in contravention of an expulsion order of the Secretary of State: s. 3 (2). By s. 2 (1.) "Immigrant" means an alien steerage passenger who is to be landed in the United Kingdom but does not include (a.) any passenger who shows to the satisfaction of the immigration officer or board concerned in the case that he desires to land in the United Kingdom only for the purpose of proceeding within a reasonable time to some destination out of the United Kingdom or (b.) any passengers holding prepaid through tickets to some such destination [where security is given to the satisfaction of the Secretary of State by the master or owner]. (2.) "Immigrant ship" means a ship which brings to the United Kingdom more than twenty alien steerage passengers who are to be landed in the United Kingdom whether at the same or different ports [or such number

as may be fixed by order of the Secretary of State]. (3.) "Passenger" includes any person carried on the ship other than the master and persons employed in the working or service of the ship and "steerage passenger" includes all passengers except such persons as may be declared by the Secretary of State to be cabin passengers by order.

(f) A private house during a sale is a place of public resort: *Sewell v. Taylor*, 29 L. J. M. C. 50; and so is a railway platform: *Ex p. Davis*, 26 L. J. M. C. 178; but a steamboat is not: *R. v. Taylor*, 21 J. P. 488.

(g) 34 & 35 Viet. c. 112, s. 15.

(h) This may appear from the circumstances: *ib.*

(i) 26 Viet. c. 13, s. 5. The Act only applies where land is irrevocably set apart for public use: *Tulk v. The Metrop. Bd. of Works*, L. R. 3 Q. B. 682.

(j) See note (k) *ante*, p. 394.

(k) 33 & 34 Vict. c. 57, s. 9.

(l) See 37 & 38 Vict. c. 49, s. 3, *inf.*

(m) 35 & 36 Viet. c. 94, s. 25. By 37 & 38 Vict. c. 49, s. 17, the same power is conferred where a constable has entered unauthorized premises under a warrant and seizes and removes therefrom intoxicating liquor found therein.

Sect. 3. the following Sunday and (b.) on Sunday night from 11 o'clock until 5 o'clock on the following morning and (c.) on all other days from half an hour after midnight until five o'clock on the same morning and

(2.) If situate beyond the metropolitan district and in the metropolitan police district or in a town or in a populous place [*i.e.* an urban sanitary district or place declared populous by the licensing committee: s. 32]—

(a.) On Saturday night from 11 o'clock until half an hour after noon on the following Sunday and (b.) on Sunday night from 10 o'clock until 6 o'clock on the following morning and (c.) on the nights of all other days from 11 o'clock until 6 o'clock on the following morning, and

(3.) If situate elsewhere—

(a.) On Saturday night from 10 o'clock until half an hour after noon on the following Sunday and (b.) on Sunday night from 10 o'clock until 6 o'clock on the following morning and (c.) on the nights of all other days from 10 o'clock until 6 o'clock on the following morning.

Such premises wherever situate shall save as herein-after mentioned be closed on Sunday afternoon from 3 or 2.30 according as the hour of opening shall be 1 o'clock in the afternoon or half an hour after noon until 6 o'clock.

Such premises wherever situate shall be closed on Christmas day and Good Friday and on the days preceeding Christmas day and Good Friday respectively as if Christmas day and Good Friday were respectively Sunday and the preceeding days were respectively Saturday but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas day immediately preceeds or succeeds Sunday. (n)

Expelling
drunken
persons.

All constables are required on the demand of any licensed person his agent or servant to expel or assist in expelling from such premises any person who is drunken violent quarrelsome or disorderly and any person whose presence on his premises would subject him to a penalty under this Act (o) and may use such force as may be required for that purpose.

Lights, etc.,
extinguishing.

If any person shall wilfully break throw down spoil or damage any watch-house, watch-box or lamp lamp-iron lamp-post pale rail chain or other furniture thereof or wilfully extinguish the light of any such lamp it shall be lawful for any person or persons who shall see the offence committed to apprehend . . . the offender. (p)

Lunatic.

Every constable and relieving officer and every overseer of a parish who has knowledge that any person (whether a pauper or not) wandering at large within the district or parish of the constable relieving officer or overseer is deemed to be a lunatic shall immediately apprehend and take the alleged lunatic or cause him to be apprehended and taken before a justice. (q) If a constable relieving officer or overseer is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic with regard to whom it is his duty to take any proceedings under this Act that the alleged lunatic should before any such

(n) 37 & 38 Vict. c. 49, s. 3. By s. 10 nothing in this Act or in the principal Act contained shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to *bona fide* travellers or to persons lodging in his house; provided that no person holding a six-day license shall sell any intoxicating liquor on Sunday to any person whatever not lodging in his house. Nothing in this Act contained as to hours of closing shall preclude the sale at any time at a railway

station of intoxicating liquors to persons arriving at or departing from such station by railroad. See *Lloyd v. Barnett*, 82 L. T. 804.

(o) 35 & 36 Vict. c. 94, s. 18. See *Howell v. Jackson*, 6 C. & P. 723; *Sealey v. Tundy*, 1902, 1 K. B. 296.

(p) 3 & 4 Will. IV. c. 90, s. 55. This Act is superseded by the Public Health Act, 1875 (see s. 163), where this latter Act applies.

(q) 53 & 54 Vict. c. 5, s. 15.

proceedings can be taken be placed under care and control the constable relieving officer or overseer may remove the alleged lunatic to the workhouse of the union in which the alleged lunatic is. (r) **Sect. 20.**

If in the United Kingdom a seaman or apprentice is guilty of the offence of desertion or of absence without leave or otherwise absents himself from his ship without leave the master any mate the owner ship's husband or consignee of the ship may with or without the assistance of the local police officers or constables convey him on board his ship and those officers and constables are hereby directed to give assistance if required. Provided that if the seaman or apprentice so requires he shall first be taken before some court capable of taking cognizance of the matter. (s) **Merchant seamen deserting.**

Where a person acting as a pedlar (t) either refuses to show his certificate or Pedlar. has no certificate or refuses to allow or prevents or attempts to prevent any such opening or inspection of his pack box bag trunk or case as is authorized under this act (u) it shall be lawful for any of the persons authorized to demand the production of the certificate and also for any other person acting by his order or at his request and in his aid to apprehend such offender and forthwith to convey or cause him to be conveyed before a justice. (x) Nothing in this act shall render it necessary for a certificate to be obtained by the following persons as such (1.) commercial travellers or other persons selling or seeking orders for goods wares or merchandize to or from persons who are dealers therein and who buy to sell again or selling or seeking orders for books as agents authorized in writing by the publishers of such books. (2.) Sellers of vegetables fish fruit or victuals. (3.) Persons selling or exposing to sale goods wares or merchandize in any public mart market or fair legally established. (y)

Casual paupers may be removed from the ward to the workhouse. (z) **Poor.**

All constables are required on demand to remove or assist in removing any person who wilfully obstructs or incites any one to obstruct any officer of the post office in the execution of his duty or who whilst in any post office or within any premises belonging to any post office or used therewith obstructs the course of business of the post office. (a) **Post office.**

Where a constable arrests a person at the instigation of a third party on a reasonable charge and suspicion he is under no liability for so doing if he act purely ministerially. The liability (if any) rests with the party so giving in charge. (b) **Reasonable charge.**

In case any person or persons shall profanely swear or curse in the presence Swearing. and hearing of any constable . . . or other peace officer it shall and may be

(r) S. 20.

(s) 57 & 58 Vict. c. 60, s. 222. A seaman may leave his ship for the purpose of forthwith entering the naval service of His Majesty, and in that case shall not by reason of so leaving his ship be deemed to have deserted therefrom or otherwise be liable to any punishment or forfeiture whatever: s. 195.

(t) Pedlar is any hawker pedlar petty chapman tinker caster of metals mender of chairs or other person who without any horse or other beast bearing or drawing burden travels and trades on foot and goes from town to town or to other men's houses carrying to sell or exposing for sale any goods wares or merchandize or pro-

curing orders for goods wares or merchandize immediately to be delivered or selling or offering for sale his skill in handicraft: 34 & 35 Vict. c. 96, s. 3.

(u) Any constable may demand the certificate or inspect the pack: ss. 17, 19.

(x) S. 18.

(y) S. 23. See *R. v. Hodgkinson*, 10 B. & C. 74; *Gregg v. Smith*, L. R. 8 Q. B. 302.

(z) See post, p. 441.

(a) 8 Ed. VII. c. 48, s. 67.

(b) *Flewster v. Royle*, 1 Camp. 188; *Glynn v. Houston*, 2 M. & Gr. 337. And see *Creagh v. Gamble*, 24 L. R. Ir. 458; *Hogg v. Ward*, 3 H. & N. 417, and cf. *Grinham v. Willey*, 28 L. J. Ex. 242.

Sect. 3. lawful for any and every such constable . . . or other peace officer and they and each of them are hereby authorized and required (in case any such person shall be unknown to them) to seize secure and detain such offender or offenders . . . and forthwith to carry before the next justice. (c)

Canals and Rivers.

Canals and Rivers.—These officers having just cause to suspect felony and having entered on board any boat or other vessel lying in a canal or river or any lock or dock thereunto belonging may . . . take into custody all persons suspected of being concerned in such felonies or other offences. (d)

Idle and disorderly persons.

It shall be lawful for any such constable to take into custody without a warrant any loose idle and disorderly person whom he shall find disturbing the public peace or whom he shall have good cause to suspect of having committed or being about to commit any felony misdemeanour or breach of the peace or other offence contrary to the provisions of this Act and every person whom he shall find between sunset and the hour of eight in the morning lying or loitering in or upon any towing-path or in or upon any wharf bridge railway quay landing-place lock dock or upon the bank of any such canal or river and not giving a satisfactory account of himself. (e)

Found committing offences.

Any person found committing any offence punishable upon summary conviction by virtue of this Act may be taken into custody without a warrant by any constable. (f) The offences are:—

Assault.

Every person who shall assault or resist any such constable in the execution of his duty or who shall aid or incite any person so to assault or resist. (g)

Instruments for unlawfully obtaining liquor.

Every person who shall be found upon any such canal or river or in or upon any lock dock warehouse wharf quay or bank thereof or on board of any boat or vessel lying or being in any such canal or river or in any lock or dock thereunto belonging having in his possession or under his control any tube or other instrument for the purpose of unlawfully obtaining any wine spirits or other liquors or goods or having in his possession any skin bladder or other utensil for the purpose of unlawfully secreting or carrying away any such wine spirits or liquors or goods and any person who shall attempt unlawfully to obtain any such wine spirit or other liquors or goods. (h)

Piercing casks, etc.

Every person who shall bore pierce break cut open or otherwise injure any cask box or package containing wine spirits or other liquors or any case box sack wrapper package or roll of goods on board of any boat vessel or waggon or in or upon any warehouse wharf quay or bank of or belonging to any such canal or river with intent feloniously to steal or otherwise unlawfully obtain or to injure the contents or any part thereof or who shall unlawfully drink or wilfully spill or allow to run to waste any such liquors or any part thereof. (i)

Stolen property.

Stolen property, offering in pawn. (k)

Metropolitan.

Metropolitan.—By 2 & 3 Vict. c. 47 (the Metropolitan Police Act 1839), (l) s. 63 it shall be lawful for any constable belonging to the metropolitan police district and for all persons whom he shall call to his assistance (m) to take into custody without a warrant any person who within view of any such constable

(c) 19 Geo. II. c. 21, s. 3.

(d) 3 & 4 Vict. c. 50, s. 9.

(e) S. 10.

(f) S. 11.

(g) S. 6.

(h) S. 7.

(i) S. 8.

(k) S. 12.

(l) It is to be noted that within three

years of the passing of this Act, Parliament deemed it advisable, for the first time in its history, *semble* to pass special legislation for the protection of the person of the Sovereign.

(m) It is in this connection that the phrase *rem recte si possis*, etc., has perhaps been best seen.

shall offend in any manner against this act and whose name and address shall be unknown to such constable and cannot be ascertained by such constable. (n) **Sect. 63.**

By s. 64 it shall be lawful for any such constable to take into custody without a warrant all loose idle and disorderly (o) persons whom he shall find disturbing the public peace or whom he shall have good cause to suspect of having committed or being about to commit any felony misdemeanour or breach of the peace and all persons whom he shall find between sunset and the hour of eight in the morning lying or loitering in any highway yard or other place and not giving a satisfactory account of themselves. **Unknown offenders. Idle and disorderly.**

By s. 66 any person found committing any offence punishable either upon indictment or as a misdemeanour upon summary conviction by virtue of this Act may be taken into custody without a warrant by any constable . . . and every such constable may also (p) stop search and detain . . . any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained. (q) **Found committing offences.**

By s. 28 it shall be lawful for any constable to take into custody every person who for the purpose of preventing the seizure or discovery of any materials furniture stores or merchandize belonging to or having been part of the cargo of any ship boat or vessel lying in the river Thames or the docks or creeks adjacent thereto or of any other articles unlawfully obtained from any such ship or vessel shall wilfully let fall or throw into the river or in any other manner convey from any ship boat or vessel wharf quay or landing-place any such article or who shall be accessory to any such offence. **Letting fall articles into Thames with intent.**

By s. 34 it shall be lawful for every superintendent inspector or sergeant belonging to the metropolitan police force having just cause to suspect that any felony has been or is about to be committed in or on board of any ship boat or other vessel lying in the said river docks or creeks . . . to take into custody all persons suspected of being concerned in such felonies. **Superintendents, etc., suspecting felony on river.**

The other material sections of this Act are as follows:—

5. The constables belonging to the metropolitan police force shall have all the powers and privileges of a constable in the counties of Berkshire and Buckinghamshire, and upon the river Thames within or adjoining to the several counties of Middlesex, Surrey, Berkshire, Essex, and Kent, and within or adjoining to the city of London and the liberties thereof, and in and on the several creeks, inlets, and waters, docks, wharfs, quays, and landing places thereto adjacent, and shall act therein and thereupon as fully as in any part of the metropolitan police district. **Metropolitan police constables to act on the river Thames, etc.**

7. It shall be lawful for the commissioners to administer to any constable belonging to the metropolitan police force an oath to execute the office of constable within the royal palaces of her majesty and ten miles thereof; and every constable who shall be so sworn shall have the powers and privileges of a constable within the said royal palaces and ten miles thereof. **Constables may be sworn to act for the palaces.**

14. Every constable who shall be guilty of any neglect or violation of duty in his office of constable shall be liable to a penalty not more than ten pounds, the amount of which penalty may be deducted from any salary then due to such constable for neglect of duty. **Penalty on constables for neglect of duty.**

(n) The like power is conferred as to the Metropolitan Management Acts, *ante*, p. 327, by 18 & 19 Vict. c. 120, s. 229.

(o) These words must be construed strictly: *Stochen v. Carter*, 4 C. & P. 477. See 10 Geo. IV. c. 44, s. 7.

(p) This applies only to possession in the streets: *Hadley v. Perks*, L. R. 1 Q. B. 444; but the offender may be arrested

subsequently on immediate pursuit not in a street: *R. v. Fisher*, 32 L. T. 22.

(q) By 38 & 39 Vict. c. 25, s. 6, a constable of the metropolitan police may . . . stop search and detain any person reasonably suspected of having or conveying in any manner any of Her Majesty's stores stolen or unlawfully obtained.

Sect. 14. offender, or, in the discretion of the magistrate, may be imprisoned, with or without hard labour, for any time not more than one calendar month.

15. [Constables not to resign without leave or notice.]

16. [Constables dismissed to deliver up accoutrements.] (r)

Penalty for unlawful possession of accoutrements, or for assuming the dress of constables.

17. Every person, not being a constable of the metropolitan police force, who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to any such constable, and who shall not be able satisfactorily to account for his possession thereof, or who shall put on the dress or take the name, designation, or character of any person appointed as such constable for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall, in addition to any other punishment to which he may be liable for such offence, be liable to a penalty not more than ten pounds.

Penalty for assaults on metropolitan police.

18. Every person who shall assault or resist any person belonging to the metropolitan police force in the execution of his duty, or who shall aid or incite any person so to assault or resist, shall for every such offence be liable to a penalty of not more than five pounds, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned for any time not more than one calendar month.

Persons receiving ship's stores from seamen, etc.

26. Every person who within the metropolitan police district shall knowingly take in exchange from any seaman or other person, not being the owner or master of any vessel, anything belonging to any vessel lying in the river Thames or in any of the docks or creeks adjacent thereto, or any part of the cargo of any such vessel, or any stores or articles in charge of the owner or master of any such vessel, shall be deemed guilty of a misdemeanor.

Cutting ropes, cables, etc.

27. Every person who shall unlawfully cut, damage, or destroy any of the ropes, cables, cordage, tackle, headfasts, or other the furniture of or belonging to any ship, boat, or vessel lying in the river Thames or in any of the docks or creeks adjacent thereto, with intent to steal or otherwise unlawfully obtain the same or any part thereof, shall be deemed guilty of a misdemeanor.

Framing a false bill of parcels to escape detection.

29. Every person who, for the purpose of protecting or preventing anything whatsoever from being seized within the metropolitan police district on suspicion of its being stolen or otherwise unlawfully obtained, or of preventing the same from being produced or made to serve as evidence concerning any felony or misdemeanor committed or supposed to be committed within the metropolitan police district, shall frame or cause to be framed any bill of parcels containing any false statement in regard to the name or abode of any alleged vendor, the quantity or quality of any such thing, the place whence or the conveyance by which the same was furnished, the price agreed upon or charged for the same, or any other particular, knowing such statement to be false, or who shall fraudulently produce such bill of parcels knowing the same to have been fraudulently framed, shall be deemed guilty of a misdemeanor.

Possessing instruments for unlawfully procuring and carrying away wine, etc.

30. Every person who shall be found within the metropolitan police district, in or upon any canal, dock, warehouse, wharf, quay, or bank, or on board any ship or vessel, having in his or her possession any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits or other liquors, or having in his or her possession any skin, bladder, or other material or utensil for the purpose of unlawfully secreting or carrying away any such wine, spirits, or other liquors, and any person who shall attempt unlawfully to obtain any such wine, spirits, or other liquors, shall be deemed guilty of a misdemeanor.

31. Every person who shall, within the metropolitan police district, bore, pierce, break, cut open, or otherwise injure any cask, box or package containing wine, spirits, or other liquors, on board any ship, boat, or vessel, or in or upon any warehouse, wharf, quay, or bank, with intent feloniously to steal or otherwise unlawfully obtain any part of the contents thereof, or who shall unlawfully drink or wilfully spill or allow to run to waste any part of the contents thereof, shall be deemed guilty of a misdemeanor.

Sect. 31.

Piercing casks, opening packages, etc.

32. Every person who shall, within the metropolitan police district, wilfully cause to be broken, pierced, started, cut, torn, or otherwise injured any cask, chest, bag, or other package containing or prepared for containing any goods while on board of any barge, lighter, or other craft lying in the said river, or any dock, creek, quay, wharf, or landing place adjacent to the same, or in the way to or from any warehouse, with intent that the contents of such package or any part thereof may be spilled or dropped from such package, shall be deemed guilty of a misdemeanor.

Breaking packages with intent to spill contents.

36. Every master or commander or other officer of any ship, boat, or vessel (except her majesty's ships) who, while such ship or vessel shall lie or be in the river Thames between Westminster Bridge and Blackwall, keeps any gun on board such ship, boat, or vessel shotted or loaded with ball, or causes or permits to be fired any gun on board such ship, boat, or vessel before sun-rising or after sun-setting, shall be liable for every gun so kept shotted or loaded to a penalty of five shillings, and for every gun so fired shall be liable to a penalty of ten shillings.

Penalty for having on board guns loaded with ball, or discharging guns in the night.

37. Every master or commander or other officer of any such ship, boat, or vessel, or any other person on board of the same, who, while such ship, boat, or vessel shall lie in the said river between Westminster Bridge and Blackwall, shall heat or melt, or cause or permit to be heated or melted, on board such ship, boat, or vessel any pitch, tar, rosin, grease, tallow, oil, or other combustible matter, shall for every such offence be liable to a penalty not more than five pounds.

Penalty for heating combustible matters on board of vessels.

38. The business and amusements of all fairs holden within the metropolitan police district shall cease at the hour of eleven in the evening, and shall not begin earlier than the hour of six in the morning: and if any house, room, booth, standing, tent, caravan, waggon, or other place shall, during the continuance of any such fair, be open within the hours of eleven in the evening and six in the morning, for any purpose of business or amusement, in the place where such fair shall be holden, it shall be lawful for any constable to take into custody the person having the care or management thereof, and also every person being therein who shall not quit the same forthwith upon being bidden by such constable so to do; and the person so then having the care or management of any such house, room, booth, standing, tent, caravan, waggon, or other place shall be liable to a penalty not more than five pounds, and every person convicted of having been therein, and of not having quitted the same forthwith upon being bidden by a constable so to do, shall be liable to a penalty not more than forty shillings.

Penalty on keeping fairs open within forbidden hours.

39. [Fairs within the metropolitan police district may be inquired into by justice.]

44. Every person who shall have or keep any house, shop, room, or place of public resort within the metropolitan police district, wherein provisions, liquors, or refreshments of any kind shall be sold or consumed, (whether the same shall be kept or retailed therein or procured elsewhere,) and who shall wilfully or knowingly permit drunkenness or other disorderly conduct in such house, shop, room, or place, or knowingly suffer any unlawful games or any gaming whatsoever

Regulations respecting public houses to extend to other houses of public resort.

Sect. 44.

Penalty on keepers of cook shops, etc., making internal communication with an adjoining public house.

therein, or knowingly permit or suffer prostitutes or persons of notoriously bad character to meet together and remain therein, shall for every such offence be liable to a penalty of not more than five pounds.

45. Every person who shall make or use or allow to be made or used any internal communication between any house, shop, room, or place of public resort not licensed for the sale of wine, spirits, beer, or other exciseable articles within the said district, and any house, shop, room, or place licensed for the sale of wine, spirits, beer, or other exciseable articles, or in which wine is sold by a free vintner, shall be liable to a penalty not more than ten pounds for every day that such communication shall be open.

46. [Power to enter unlicensed theatres, and take away persons found there, by order of commissioner.](s)

47. [Places used for bear-baiting, cock-fighting, etc. entry by order of commissioner.]

48. [Commissioners empowered to authorize superintendents of police to enter gaming houses.]

Penalty on pawnbrokers receiving pledges from persons under the age of sixteen.

50. Every pawnbroker within the metropolitan police district, and every agent or servant employed by any such pawnbroker, who shall purchase or receive or take any goods or chattels in pawn or pledge of or from any person apparently under the age of sixteen years, shall be liable to a penalty not more than five pounds.

Empowering the commissioners of police to regulate the route and conduct of persons driving stage carriages, cattle, etc., during the hours of divine service.

51. On the application of the minister or churchwardens of any church, chapel, or other place of public worship within the metropolitan police district, to the commissioners of police, it shall be lawful for the said commissioners to make orders for regulating the route and conduct of persons who shall drive any cart or carriage, or who shall drive any cattle, sheep, pigs, or other animals, within such parish or place, during the hours of divine service on Sunday, Christmas day, Good Friday, or any day appointed for a public fast or thanksgiving, and any orders which shall be so made shall be printed and affixed on or near the church, chapel, or place of public worship to which the same shall refer, and in some conspicuous places leading to and contiguous thereto, and elsewhere, as the commissioners of police shall direct; and every breach of any such order shall be deemed a separate offence. (t)

Prohibition of nuisances by persons in the thorough-fares. (u)

54. Every person shall be liable to a penalty not more than forty shillings, who, within the limits of the metropolitan police district, shall, in any thoroughfare or public place, commit any of the following offences; (that is to say,)

1. Every person who shall, to the annoyance of the inhabitants or passengers, expose for show or sale (except in a market lawfully appointed for that

(s) A portable booth used by strolling players does not come within this section: *Fredericks v. Howie*, 31 L. J. M. C. 249.

(t) Persons taking part in open-air meetings (except for the election of members) within a mile of Westminster Hall during the sittings of and with a view to intimidate Parliament or the Courts of Law may be arrested: 57 Geo. III. c. 19, s. 23; see 28 & 29 Vict. c. 48, s. 18; and so also may more than ten persons repairing to the King or Parliament to present a petition or address: 13 Car. II. c. 5. Meetings in Trafalgar Square are now permitted under regulations.

By 30 & 31 Vict. c. 134, s. 23, any three or more persons assembled together

in any part of a street within the metropolis for the purpose of betting shall be deemed to be obstructing the street, and in the City any constable of that force and without, any constable of the metropolitan force may take into custody without warrant any person who may commit such offence in view of such constable. Extended to six miles from Charing Cross by 48 & 49 Vict. c. 18, s. 2.

(u) See *Simmons v. Millingen*, 2 C. B. 524. As to the power of arrest for breach of bye-laws relating to nuisances, see 54 & 55 Vict. c. 76, s. 16, *ante*, p. 349. As to the City, see 2 & 3 Vict. c. xciv., the powers under which are practically the same.

- purpose) or feed or fodder any horse or other animal, or show any caravan containing any animal, or any other show or public entertainment, or shoe, bleed, or farry any horse or animal (except in cases of accident), or clean, dress, exercise, train, or break any horse or animal, (x) or clean, make, or repair any part of any cart or carriage, except in cases of accident, where repair on the spot is necessary :
2. Every person who shall turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or set on or urge any dog or other animal to attack, worry, or put in fear any person, horse, or other animal :
 3. Every person who by negligence or ill-usage in driving cattle shall cause any mischief to be done by such cattle, or who shall in anywise misbehave himself in the driving, care, or management of such cattle, and also every person not being hired or employed to drive such cattle who shall wantonly and unlawfully pelt, drive, or hunt any such cattle :
 4. Every person having the care of any cart or carriage who shall ride on any part thereof, on the shafts, or on any horse or other animal drawing the same, without having and holding the reins, or who shall be at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same :
 5. Every person who shall ride or drive furiously, or so as to endanger the life or limb of any person, or to the common danger of the passengers in any thoroughfare : (y)
 6. Every person who shall cause any cart, public carriage, sledge, truck, or barrow, with or without horses, to stand longer than may be necessary for loading or unloading, or for taking up or setting down passengers, except hackney carriages standing for hire in any place not forbidden by law, or who by means of any cart, carriage, sledge, truck, or barrow, or any horse or other animal, shall wilfully interrupt any public crossing, or wilfully cause any obstruction in any thoroughfare. (z)
 7. Every person who shall lead or ride any horse or other animal, or draw or drive any cart or carriage, sledge, truck, or barrow, upon any footway or curbstone, or fasten any horse or other animal so that it can stand across or upon any footway :
 8. Every person who shall roll or carry any cask, tub, hoop, or wheel, or any ladder, plank, pole, showboard, or placard, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :
 9. Every person who, after being made acquainted with the regulations or directions which the commissioners of police shall have made for regulating the route of horses, carts, carriages, and persons during the time of divine service, and for preventing obstructions during public processions, and on other occasions hereinbefore specified, shall wilfully disregard or not conform himself thereunto : (a)
 10. Every person who, without the consent of the owner or occupier, shall affix any posting bill or other paper against or upon any building, wall, fence, or pale, or write upon, soil, deface, or mark any such building,

(x) This does not apply to cattle turned out under the supervision of a boy. See *Sherborn v. Wells*, 32 L. J. M. C. 179.

(y) See *Justice v. Gosling*, 12 C. B. 39.

(z) See *Dunn v. Holt*, 90 L. T. 571.

(a) This power extends to refusal to conform to regulations made under the Metropolitan Streets Acts, 1867 : 30 & 31 Vict. c. 134, s. 12.

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wall, fence, or pale, with chalk or paint, or in any other way whatsoever, or wilfully break, destroy, or damage any part of any such building, wall, fence, or pale, or any fixture or appendage thereunto, or any tree, shrub, or seat in any public walk, park, or garden :

11. Every common prostitute or nightwalker, loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation, to the annoyance of the inhabitants or passengers :
12. Every person who shall sell or distribute or offer for sale or distribution, or exhibit to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sing any profane, indecent, or obscene song or ballad, or write or draw any indecent or obscene word, figure, or representation, or use any profane, indecent, or obscene language, to the annoyance of the inhabitants or passengers :
13. Every person who shall use any threatening, abusive, or insulting words or behaviour, with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned :
14. Every person, except the guards and postmen belonging to her majesty's post office in the performance of their duty, who shall blow any horn or use any other noisy instrument, for the purpose of calling persons together, or of announcing any show or entertainment, or for the purpose of hawking, selling, distributing, or collecting any article whatsoever, or of obtaining money or alms :
15. Every person who shall wantonly discharge any fire-arm, or throw or discharge any stone or other missile, to the damage or danger of any person, or make any bonfire, or throw or set fire to any fire-work :
16. Every person who shall wilfully and wantonly disturb any inhabitant by pulling or ringing any door-bell or knocking at any door without lawful excuse, or who shall wilfully and unlawfully extinguish the light of any lamp :
17. Every person who shall fly any kite or play at any game to the annoyance of the inhabitants or passengers, or who shall make or use any slide upon ice or snow in any street or other thoroughfare, to the common danger of the passengers :

And it shall be lawful for any constable belonging to the metropolitan police force to take into custody, without warrant, any person who shall commit any such offence within view of any such constable. (b)

Cannon, etc.,
not to be fired
near dwelling-
houses.

55. No person other than persons acting in obedience to lawful authority shall discharge any cannon or other fire-arm of greater calibre than a common fowling piece within three hundred yards of any dwelling house within the said district, to the annoyance of any inhabitant thereof, and every person who after

(b) By 18 & 19 Vict. c. 120, s. 229, it shall be lawful for any officer or servant of the (county council) or any (borough council) and for any police constable and all persons called by him to his assistance to seize and detain any person who has committed any offence against the provisions of this Act or any bye-law made in pursuance thereof, and whose name and residence shall be unknown to such officer or servant or police constable and convey him with all convenient speed before some justice. By s. 205 no scavenger or other person shall sweep rake or place any soil rubbish or filth or any other thing into or

in any sewer or drain or over any grate communicating with any sewer or drain or into any dock or inlet communicating with the mouth of any sewer or drain or into which any sewer or drain may discharge its contents or into the river Thames contiguous thereto. By s. 208 a penalty is imposed if any person at any time obstruct hinder or molest any surveyor inspector collector or other officer workman or person whomsoever employed by virtue of this Act in the performance or execution of his duty. See this Act, *ante*, p. 327.

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being warned of the annoyance by any inhabitant shall discharge any such fire-arm shall be liable to a penalty not more than five pounds.

Dog carts.

56. Every person who within the metropolitan police district shall use any dog for the purpose of drawing or helping to draw any cart, carriage, truck, or harrow shall be liable to a penalty not more than forty shillings for the first offence, and not more than five pounds for the second or any following offence.

Drunkards guilty of riotous or indecent behaviour may be imprisoned.

58. Every person who shall be found drunk in any street or public thoroughfare within the said district, and who while drunk shall be guilty of any riotous or indecent behaviour, and also every person who shall be guilty of any violent or indecent behaviour in any police station house, shall be liable to a penalty of not more than forty shillings for every such offence, or may be committed, if the magistrate before whom he shall be convicted shall think fit, instead of inflicting on him any pecuniary penalty, to the house of correction for any time not more than seven days.

Persons using carriages without driver's consent liable to penalty.

59. Every person who shall ride upon or cause himself to be carried or drawn by any carriage within the metropolitan police district, without the consent of the owner or driver thereof, shall be liable to a penalty not more than five shillings, or if a child apparently under the age of twelve years, it shall be lawful for the magistrate to cause such child to be detained until his parent or guardian can attend for the purpose of having such child delivered into his care, and if such parent or guardian do not so attend before the closing of the police court for the day, it shall be lawful for the magistrate to order such child to be discharged.

Prohibition of other nuisances.

60. Every person who, in any street or public place within the limits of the metropolitan police district, shall be guilty of any of the following offences, shall be liable to a penalty not more than forty shillings for every such offence; (that is to say,)

1. Every person who in any thoroughfare shall burn, dress, or cleanse any cork, or hoop, cleanse, fire, wash, or scald any cask or tub, or hew, saw, bore, or cut any timber or stone, or slack, sift, or screen any lime:
2. Every person who shall throw or lay in any thoroughfare any coals, stones, slates, shells, lime, bricks, timber, iron, or other materials (except building materials, or rubbish thereby occasioned, which shall be placed or inclosed so as to prevent any mischief happening to passengers):
3. Every person who in any thoroughfare shall beat or shake any carpet, rug, or mat (except door mats before the hour of eight in the morning), or throw or lay any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish, (c) or throw or cause any such thing to fall into any sewer, pipe, or drain, or into any well, stream, or watercourse, pond, or reservoir for water, . . . (d)
7. Every person who shall expose anything for sale in any park or public garden, unless with the consent of the owner or other person authorized to give such consent, or upon or so as to hang over any carriageway or footway, or on the outside of any house or shop, or who shall set up or continue any pole, blind, awning, line, or any other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare: (e)

(c) Refuse may be placed on kerb before 8 a.m. in box in the City in streets named by the Commissioners of Sewers: 30 & 31 Vict. c. 134, s. 25.

(d) See 54 & 55 Vict. c. 76, s. 142.

(e) See *Wandsworth v. Pretty*, 1899, 1 Q. B. 1.

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8. Every person who, to the danger of passengers in any thoroughfare, shall leave open any vault or cellar, or the entrance from any thoroughfare to any cellar or room underground, without a sufficient fence or hand-rail, or leave defective the door, window, or other covering of any vault or cellar, or who shall not sufficiently fence any area, pit, or sewer left open in or adjoining to any thoroughfare, or who shall leave such open area, pit, or sewer, without a sufficient light after sunset to warn and prevent persons from falling thereinto. (*f*)

Mad dogs, etc.

61. It shall be lawful for any constable belonging to the metropolitan police force to destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any dog or animal reasonably suspected to be in a rabid state; and the owner of any such dog or animal who shall permit the same to go at large after having information or reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state, shall be liable to a penalty not more than five pounds.

Compensation for hurt or damage not exceeding £10.

62. Every person who, by committing any offence herein forbidden within the said district, shall have caused any hurt or damage to any person or property, may be apprehended, with or without any warrant, by any constable, and if he shall not, upon demand, make amends for such hurt or damage to the satisfaction of the person aggrieved, he shall be detained by the constable in order to be taken before a magistrate. (*g*)

By 35 & 36 Vict. c. 15 (Parks Act, 1872)—(*h*)

Park-keeper may apprehend any offender whose name or residence is not known.

5. Any park-keeper in uniform, and any persons whom he may call to his assistance, may take into custody, without a warrant, any offender who in the park where such keeper has jurisdiction, and within the view of such keeper, acts in contravention of any of the regulations, *infra*, provided that the name or residence of such offender is unknown to and cannot be ascertained by such park-keeper. (*i*)

Powers, duties, and privileges of park-keeper.

7. Every park-keeper, in addition to any powers and immunities specially conferred on him by this Act, shall, within the limits of the park of which he is keeper, have all such powers, privileges, and immunities, and be liable to all

(*f*) By s. 69 persons arrested must be forthwith delivered into the custody of the constable in charge of the nearest station. "Forthwith" means with reasonable promptness. See *R. v. Aston*, 19 L. J. M. C. 236; *Hancock v. Somes*, 28 L. J. M. C. 196; *Costar v. Hetherington*, 28 L. J. M. C. 198.

(*g*) By 18 & 19 Vict. c. 120, s. 206, if any person wilfully take away break throw down or damage any lamp set up for lighting any of the streets [within the jurisdiction of the county council] or wilfully extinguish the light within the same or damage the iron or other furniture thereof, or wilfully damage any other property vested in any borough council or the county council it shall be lawful for any person who sees such offence committed to seize as also for any other person to assist in seizing the offender and by the authority of this Act and without any other warrant to convey him or to deliver him into the custody of a police officer in

order to be secured and conveyed before some justice.

By 28 & 29 Vict. c. 90, s. 12, all police constables may of their own motion or on the request of the chief or other officer of the fire brigade remove any persons who interfere by their presence with the operations of the fire brigade.

By 28 & 29 Vict. c. 34, s. 4, any constable of the Metropolitan or City police may personally conduct any destitute wayfarer wanderer or foundling or other destitute person not having committed or being charged with any offence punishable by law within the knowledge of such constable to any wards or other places of reception approved of by the poor law board.

(*h*) Commons are managed under local Acts. See *ante*, p. 252.

(*i*) Copies of such regulations are to be put up in the park in a conspicuous manner: s. 10.

such duties and responsibilities, as any police constable has within the police district in which such park is situated; and any person so appointed a park-keeper as aforesaid shall obey such lawful commands as he may from time to time receive from the Commissioners in respect of his conduct in the execution of his office.

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8. Every police constable belonging to the police force of the district in which any park, garden, or possession to which this Act applies is situate shall have the powers, privileges, and immunities of a park-keeper within such park garden, or possession.

Police constables to have the same powers, etc., as park-keepers.

Regulations to be observed by Persons using the Royal Parks

1. No person shall drive or wheel into a park any vehicle, barrow, truck, or machine not admitted therein by the rules of the park.

2. No person shall drive or wheel in a park any vehicle, barrow, truck, or machine except in accordance with the rules of the park.

3. No person shall ride any horse or other animal in a park except in accordance with the rules of the park.

4. No groom or horsebreaker shall exercise or train any horse in any part of a park except at the times and in manner permitted by the rules of the park.

5. No person shall ride or drive furiously so as to endanger the safety or convenience of any other person using a park.

6. No person shall ride or drive on any road ordinarily set apart for riding or driving during such period as by notice in writing affixed thereto it may be declared unfit for use by reason of repairs or for any other special reason.

7. No person shall drill or practise military evolutions, or use arms, or play any game or music, or practise gymnastics, or sell or let any commodity, in a park, except in accordance with the rules of the park.

8. No person shall deliver, (k) or invite any person to deliver, any public address in a park except in accordance with the rules of the park.

9. No intoxicated person shall enter or remain in a park.

10. No person shall walk upon any shrubbery or flower bed, or enclosed plantation, or any other land specially enclosed.

11. No person shall use any water in a park for fishing, bathing, washing, or skating, or for any other purpose, except in accordance with the rules of the park.

12. No person shall allow any dog to be at large in a park except in accordance with the rules of the park.

13. No person shall destroy or injure any tree, shrub, or plant, or pluck any flower or leaf thereof, or injure or deface any building, structure, seat, railing, or other property in or enclosing a park, or put up, fix, or exhibit any advertisement, posting bill, or other paper in a park.

14. No person shall commit any act in violation of public decency, or use profane, indecent, or obscene language to the annoyance of other persons using a park.

15. No person shall discharge any firearm, or wantonly throw or discharge any stone or other missile to the damage or danger of any person, or make any bonfire, or throw or set fire to any firework in a park.

16. No person shall wilfully interfere with or annoy any other person using or enjoying a park, or any part thereof, in accordance with the rules of the park, or otherwise using or enjoying the same in any lawful manner.

(k) See *Bailey v. Williamson*, L. R. 8 Q. B. 118.

17. No person shall wilfully disturb any animal grazing in a park, or otherwise worry or ill-treat any animal in a park, or in the waters thereof.

18. No person shall enter into or remain in any part of a park during any time between sunset and sunrise appointed for closing the same, except for the purpose of passing along a way kept open for the use of the public.

19. For the purposes of this schedule "the rules of the park" shall be deemed to be such rules as may in relation to any matter within the jurisdiction of the ranger (if any) of the park be from time to time made by the ranger, and in relation to any other matter to which these regulations are applicable be from time to time made by the Commissioners of Her Majesty's Works and Public Buildings.

20. Any rules, whether made by the ranger or by the Commissioners of Her Majesty's Works and Public Buildings, shall be issued under the common seal of the said Commissioners; and any rules purporting to be the rules of the park may be proved by the production of a copy thereof purporting to be printed by the printers of Her Majesty.

This Act applies to Hyde Park; Saint James's Park; The Green Park; Kensington Gardens; Parliament Square Garden; Regent's Park; Kennington Park; Primrose Hill; Victoria Park; Battersea Park; Greenwich Park; Kew Gardens, Pleasure Grounds, and Green; Hampton Court Park, Hampton Court Gardens and Green; Richmond Park and Green; Bushy Park; Holyrood Park; Linlithgow Peel or Park.

*County and
Municipal.*

County and Municipal.—A borough constable may while on duty apprehend any idle and disorderly person whom he finds disturbing the public peace or whom he has just cause to suspect of intention to commit a felony and deliver him into the custody of the borough constable in attendance at the nearest watch-house. (*l*)

Towns.

Towns.—By 10 & 11 Vict. c. 89 (The Towns Police Clauses Act, 1847)—

15. Any person found committing any offence punishable either upon indictment or as a misdemeanour upon summary conviction by virtue of this or the special Act (*m*) may be taken into custody without a warrant by any of the constables appointed under these Acts . . . and the persons so arrested shall be taken as soon as conveniently may be before some justice . . . Provided always that no person arrested under the powers of this or the special Act shall be detained in custody by any constable or other officer without the order of some justice longer than shall be necessary for bringing him before a justice or than 40 hours at the utmost. These offences are :

11. [Constables not delivering up clothing, etc., on ceasing to hold office.]

16. [Neglect of duty.]

Assault.

20. Every person who assaults or resists or who aids or incites any person to assault or resist any constable in the execution of his duty.

(*l*) 45 & 46 Vict. c. 50, s. 193. County constables have the same power: 19 & 20 Vict. c. 69, ss. 6, 31. As to parish constables, see 3 & 4 Will. IV. c. 90, s. 41; and as to lock-ups, 5 & 6 Vict. c. 109,

s. 22.

(*m*) The Act applies to all urban authorities under the Public Health Act: 38 & 39 Vict. c. 55, s. 171.

26. Every person who releases or attempts to release any cattle⁽ⁿ⁾ from any pound or place where the same are impounded under the authority of this or the special Act or who pulls down damages or destroys the same pound or place or any part thereof with intent to procure the unlawful release of such cattle.

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Pound breach.

28. Every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty not exceeding forty shillings for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days, and any constable or other officer appointed by virtue of this or the special Act, shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence; (that is to say,)

Penalty on persons committing any of the offences herein named.

Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, (o) or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains or breaks, or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary): Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear, any person or animal: (p)

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state:

Every person who, after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice:

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven, which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot:

Every person having the care of any waggon, cart, or carriage, who rides on the shafts thereof, or who, without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage on the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care:

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet:

(n) Includes horses asses mules sheep goats and swine: s. 3.

(o) An auction caravan for which the owner has paid toll is not within the sec-

tion: *Bull v. Ward*, 33 L. T. 170.

(p) See 7 Ed. VII. c. 53, s. 81, *ante*, p. 400.

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Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle: (s)

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary (q) for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burden, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare:

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same:

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway:

Every person who places or leaves any furniture, goods, wares, or merchandize or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard on any footway, or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground:

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandize, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway: (r)

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway:

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon:

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution: (s)

Every person (s) who wilfully and indecently exposes his person: (t)

Every person (s) who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language: (u)

Every person (s) who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework: (x)

Every person who wilfully and wantonly disturbs any inhabitant, by pulling

(q) This does not apply to persons: *R. v. Long*, 59 L. T. 33; *R. v. Williams*, 55 J. P. 406; *Wemyss v. Black*, 8 R. 25; *Black v. Simpson*, 5 Coup. 212.

(r) *McDonald v. White*, 9 R. 43.

(s) See 7 Ed. VII. c. 53, s. 81, ante, p. 400.

(t) This must take place in the presence of more than one person: *R. v. Webb*, 18 L. J. M. C. 39.

(u) Cf. *Marr v. McArthur*, 5 R. 38; *Stirling v. Murray*, 10 R. 59.

(x) *Simon v. Reid*, 4 Coup. 220.

or ringing any door-bell, (y) or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp :

Every person who flies any kite, or who makes or uses any slide upon ice or snow :

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime :

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers): (s)

Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning) :

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down :

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger :

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story :

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling therein to :

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, hutchers' shop, or dunghill into any street: Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases.

Every person who keeps any pigsty to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance. (z)

36. Every person who within the limits of the special Act keeps or uses or Cock-fighting, acts in the management of any house room pit or other place for the purpose of etc. fighting baiting or worrying any animals.

61. If the driver (a) or any other person having or pretending to have the Drivers' care of any . . . hackney carriage (a) be intoxicated while driving or if any

(y) Being instructed to deliver papers is not sufficient answer: *Clarke v. Hoggins*, 11 C. B. N. S. 345.

(z) By 7 & 8 Vict. c. 101, s. 53, it shall be lawful for any constable of the metropolitan police or of city of London or of any county . . . or of Liverpool Manchester Bristol Leeds and Birmingham to

conduct destitute poor found wandering abroad to any asylum for the poor in the district established under this Act.

(a) Includes conductor and omnibus: 52 & 53 Vict. c. 14, s. 4. See 10 & 11 Vict. c. 89, s. 38, for the definition of a hackney carriage, viz. any wheeled carriage standing or plying for hire in any street within

Sect. 61. such driver or other person by wanton and furious driving or by any other wilful misconduct injure or endanger any person in his life limbs or property.

Entry. *Entry.*—Constables may be required to accompany factory inspectors when obstruction is apprehended. *(b)* They are authorized to enter on lands (other than a dwelling-house or the curtilage thereof) if about to demand the production of a licence from a person carrying a gun. *(c)*

Children's entertainments. A constable may enter any building in which he has reason to believe that a children's entertainment is being or is about to be provided with a view to seeing whether reasonable precautions are provided for the safety of the children. *(d)*

Fires. Any constable acting under the orders of his superior officer . . . may enter and if necessary break into any building in the district being or reasonably supposed to be on fire or any building or land adjacent thereto without the consent of the owner or occupier thereof respectively and may do all such acts and things as they may deem necessary for extinguishing fire in any such building or for protecting the same or rescuing any person or property therein from fire. *(e)*

Billiards. They may also enter any house, room or place where any public table or board is kept for playing at billiards, bagatelle, or any game of the like kind, whenever they think proper. *(f)*

Licensing. And to detect the violation of the provisions of the Licensing Acts, which it is their duty to enforce, enter any licensed premises or any premises in respect of which an occasional licence is in force. *(g)* This section applies only to places licensed by justices, *(h)* but the constable may not demand to enter unless there is some evidence from which he may reasonably suppose that a breach of the law is being committed. *(i)*

Slaughter-houses. As to slaughter-houses, they may, either alone or accompanied by any iuspector appointed under 26 Geo. III., c. 71, at all reasonable times in the daytime, enter and view the same, and take an account of all horses and cattle found thereon. *(k)*

Threshing-machines. And on premises where they have reason to believe a threshing-machine is worked contrary to the Act. *(l)*

the limits, or standing there having a numbered plate, etc. Street here does not include a station yard: *Curtis v. Embery*, L. R. 7 Ex. 369. Every person who shall ride or drive so as to endanger the life or limb of any person or to the common danger of the passengers in any thoroughfare may also be arrested: 7 Ed. VII. c. 53, s. 79.

(b) 1 Ed. VII. c. 22, s. 119.

(c) 33 & 34 Vict. c. 57, s. 10.

(d) 8 Ed. VII. c. 67, s. 121.

(e) 7 Ed. VII. c. 53, s. 87, ante, p. 326.

(f) 8 & 9 Vict. c. 109, s. 14.

(g) 37 & 38 Vict. c. 49, s. 16. As to licensed refreshment houses, see also 23 & 24 Vict. c. 27, s. 18.

(h) *Harrison v. McL. Meel*, 50 L. T. 210.

(i) *Duncan v. Dowding*, 1897, 1 Q. B. 575.

(k) 7 & 8 Vict. c. 87, s. 4 (repealed as to London: 54 & 55 Vict. c. 76, s. 142). The Act applies to knackers' yards.

(l) 41 & 42 Vict. c. 12, s. 4. As to chaff-cutting machines see 60 & 61 Vict. c. 60, s. 6.

They may not of their own motion turn trespassers off land.(m) Trespassers.

Canal and River.—The power of these officers to enter vessels is limited to where they have just cause to believe that an offence against the Act has been or is about to be committed thereon.(n) Canal and river.

Any superintendent or inspector belonging to the metropolitan police force shall have power by virtue of his office to enter at all times, with such constables as he shall think necessary as well by night as by day, into and upon every ship, boat, or other vessel (not being then actually employed in His Majesty's service) lying in the said river (Thames) or creeks or in any dock or docks thereto adjacent and into every part of every such vessel for the purpose of inspecting and upon occasion directing the conduct of any constable stationed on board of any such vessel, and of inspecting and observing the conduct of all other persons who shall be employed on board of any such vessel in or about the lading or unlading thereof as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents and preserving the peace and good order on board of any such vessel, and for the effectual prevention or detection of any felonies or misdemeanors.(o) Metropolitan.

Every superintendent, inspector or sergeant . . . having just cause to suspect that any felony has been or is about to be committed in or on board of any ship, boat or other vessel lying in the said river, docks or creeks may enter at all times as well by night as by day into and upon every such ship, boat or other vessel, and therein take all necessary measures for the effectual prevention or detection of all felonies which he has just cause to suspect to have been or to be about to be committed in or upon the said river, docks or creeks.(p)

Search.—Any constable may in any highway, street or public place search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game,(r) or any person aiding (s) or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of a gun, or nets or engines(t) used for the killing or taking game.(u) It is not necessary that any game should be found in the nets,(x) but it should be seized on the highway (y) and found on the defendant's person,(z) though this is not absolutely necessary.(a) Search.

Metropolitan.—It shall be lawful for every superintendent or inspector . . . with such constables as he shall think necessary at any time between sun rising

(m) *R. v. Cox*, 1 F. & F. 664.
(n) 3 & 4 Vict. c. 50, s. 9; see *ante*, p. 48.
(o) 2 & 3 Vict. c. 47, s. 33.
(p) S. 34.
(q) *R. v. Spencer*, 3 F. & F. 857.
(r) Includes persons seen poaching: *Hall v. Robinson*, 53 J. P. 310. See *Brown v. Turner*, 13 C. B. N. S. 435; *Trainer*, 4 Ir. 264; and the statute cited *ante*, p. 26.
(s) See *Young*, 18 R. 20.
(t) Do not include a ferret, mesh-needle

and twine for making nets: *Gillan*, 3 Coup. 551.
(u) 25 & 26 Vict. c. 114, s. 2. Game = pheasants, partridges, grouse, black-game and their eggs, hares, woodcocks, snipes and rabbits.
(x) *Jenkin v. King*, L. R. 7 Q. B. 478; *Evans v. Botterill*, 3 B. & S. 787. See *McKenzie*, 18 R. 1; *Jameson*, 1 Ad. 91.
(y) *Clarke v. Crowder*, L. R. 4 C. P. 638.
(z) *Turner v. Morgan*, L. R. 10 C. P. 587.
(a) *Lloyd v. Lloyd*, 14 Q. B. D. 725.

and sun setting to enter any ship, boat or vessel (except His Majesty's ships) in the said river (Thames), docks and creeks, and to search the same for unlawful quantities of gunpowder. (b)

Seizure.
Diseases of
animals.

Seizure and Detention.—Under the Diseases of Animals Act the constable may stop, detain and examine any animal, vehicle, boat or thing to which an offence, or suspected offence relates, and require the same to be forthwith taken back to any place wherefrom it was unlawfully removed and execute that requisition. (c)

Cruelty to
animals.

Where any person having charge of any vehicle or animal is arrested for an offence against the Cruelty to Animals Act, the constable may take charge of such vehicle or animal and deposit the same in some place of safe custody. (d)

Dogs.

Dogs reasonably supposed to be straying may be detained until expenses paid. (e)

Explosives.

Any Government inspector, constable or officer of the local authority having reasonable cause to believe that any explosive or ingredient of an explosive, or substance found by him is liable to be forfeited, may seize and detain the same until a Court of summary jurisdiction has determined the question of forfeiture. In such case the officer seizing may either require the occupier of the place in which it was seized (whether a building or not, or a carriage, boat or ship) to detain the same in such place, or in any place under the control of such occupier, or may remove it in such manner and to such place as will, in his opinion, least endanger the public safety, and there detain it. The receptacles containing the same may be seized, and detained, and removed in like manner as the contents thereof. The officers seizing the same may use for the purposes of the removal and detention thereof any ship, boat or carriage in which the same was seized, and any tug, tender, engine, tackle, beasts and accoutrements belonging to or drawing, or provided for drawing, such ship, boat or carriage, and shall pay to the owner a reasonable compensation for such use, to be determined, in case of dispute, by a Court of summary jurisdiction, and to be recovered in like manner as penalties under the Act. The same shall, so far as practicable, be kept and conveyed in accordance with the Act and with all due precaution to prevent accidents. (f)

(b) 2 & 3 Vict. c. 47, s. 35. See *ante*, p. 378; and 38 & 39 Vict. c. 17, s. 86.

(c) 57 & 58 Vict. c. 57, s. 43.

(d) 12 & 13 Vict. c. 92, s. 19.

(e) 6 Ed. VII. c. 32, s. 3; and see 7

Ed. VII. c. 5, ss. 1, 2, as to injured animals.

(f) 38 & 39 Vict. c. 17, s. 74. These powers are by s. 96 applicable after forfeiture.

Carts, etc., in or on which there shall be reason to suspect Game. that game unlawfully obtained, or articles or things used for the purpose of taking the same are carried, may be stopped and searched, and if found therein, may be seized and detained. (g)

If the game, gun, etc., is visible, a search of the person is not necessary to give jurisdiction to seize. (h)

It shall be the duty of a constable or park-keeper being in uniform to seize Juvenile any cigarettes or cigarette papers in the possession of any person apparently smoking. under the age of 16 whom he finds smoking in any street or public place and any cigarettes or cigarette papers so seized shall be disposed of [as the police or park authority may direct] and such constable or park-keeper shall be authorized to search any boy so found smoking but not a girl. (i)

By s. 42 the provisions of this Part of this Act which make it an offence to sell cigarettes or cigarette papers, and which authorize the seizure of cigarettes persons employed in trade, etc. and cigarette papers, shall not apply where the person to whom the cigarettes or cigarette papers are sold, or in whose possession they are found, was at the time employed by a manufacturer of or dealer in tobacco, either wholesale or retail, for the purposes of his business, or was a boy messenger in uniform in the employment of a messenger company and employed as such at the time.

43. (1.) For the purposes of this Part of this Act the expression "cigarette" includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking. Application of Part III.

(2.) This Part of this Act shall apply to tobacco other than cigarettes in like manner as it applies to cigarettes, except that a person shall not be guilty of an offence for selling such other tobacco to a person apparently under the age of sixteen years if he did not know, and had no reason to believe, that it was for the use of that person.

(3.) This Part of this Act shall apply to smoking mixtures intended as a substitute for tobacco in like manner as it applies to cigarettes.

Money which has nothing to do with the charge cannot be taken. (k)

Books cards papers and other articles relating to betting Street betting. found on person arrested (l) may be taken.

Animals, carts or goods in the possession of persons arrested Vagrants. under the Vagrant Act may be seized and detained. (m)

Canal and River.—These officers may stop, search and detain Canal and river. boats or carriages on which there is reason to suspect anything stolen, (n) and such property may be taken charge of. (o)

Metropolitan.—When persons in charge of animals or car- Metropolitan. riages are taken in custody under the Metropolitan Police Act,

(g) 25 & 26 Vict. c. 114, s. 2.

(h) *Hall v. Knox*, 33 L. J. M. C. 1.

(i) 8 Ed. VII. c. 67, s. 40.

(k) *R. v. O'Donnell*, 7 C. & P. 133; *R. v. D'Eyncourt*, 21 Q. B. D. 109.

(l) 6 Ed. VII. c. 43, s. 1.

(m) 5 Geo. IV. c. 83, s. 8.

(n) 3 & 4 Vict. c. 50, s. 11.

(o) S. 9.

such animals or carriages may be deposited in some place of safe custody. (*p*)

Carts. Carts, etc., within five miles of the post office not having owner's name thereon may be seized. (*q*) This does not apply to carriages liable to excise duty. (*r*)

Dogs. Dogs found loose in the streets without a muzzle during currency of a muzzling order may be detained until payment of expenses. (*s*)

Furniture. Carts and carriages removing furniture between 8 p.m. and 6 a.m., or at any time to evade the payment of rent, may be stopped (*t*) until due inquiry can be made.

Stolen goods. And so also may any vessel, boat, cart or carriage, in or upon which there is reason to believe anything stolen or unlawfully obtained may be found. (*u*) And any vessel boat or vehicle in or on which there is reason to suspect that any of His Majesty's stores stolen or unlawfully obtained may be found. (*x*) And where persons wilfully let fall articles into the Thames or into a boat etc. with fraudulent intent—any boat in which such person shall be found or out of which any article shall be so let fall thrown or conveyed away. (*y*) And where any superintendent inspector or sergent has entered any ship etc. on suspicion of felony he may take charge of all property so suspected to be stolen. (*z*)

Swine. Swine found straying in a street or public place may be seized and removed. (*a*)

Towns.—The police under the Towns Police Clauses Act may impound cattle found straying within the limits of the special Act. (*b*)

Bail.—Where persons are brought to the station charged with offences punishable by summary jurisdiction, if it be not practicable to bring them before the justice within twenty-four hours, the superintendent or inspector must inquire into the case, and, except where the offence appears to him to be serious, shall discharge the prisoner upon his entering into recognisance, (*c*) with or without sureties, for a reasonable amount to appear before the Court. (*d*)

(*p*) 2 & 3 Vict. c. 47, s. 68.

(*q*) 1 & 2 Will. IV. c. 22, s. 60.

(*r*) *Danby v. Hunter*, 5 Q. B. D. 20.

(*s*) 30 & 31 Vict. c. 134, s. 18. See *Wren v. Pocock*, 34 L. T. 697.

(*t*) 2 & 3 Vict. c. 47, s. 67.

(*u*) 2 & 3 Vict. c. 47, s. 66.

(*x*) 38 & 39 Vict. c. 25, s. 6.

(*y*) 2 & 3 Vict. c. 47, s. 28.

(*z*) S. 34.

(*a*) 54 & 55 Vict. c. 76, s. 17, *ante*, p. 349.

(*b*) 10 & 11 Vict. c. 89, s. 24: i.e. horses asses mules sheep goats and swine: s. 3.

(*c*) Recoverable summarily as a fine: 42 & 43 Vict. c. 49, s. 9.

(*d*) S. 38.

Subject to this enactment, there is, generally speaking, no obligation to give bail on arrest. (*e*) It is a matter which usually falls within the discretion of the officer in charge of the station. (*f*)

Chimney-sweepers and Pedlars.—Chimney-sweepers may be required to give their name and address, and to produce their certificate. (*g*) *Chimney-sweepers and pedlars.*

Pedlars may be required to produce their certificate and to permit their pack to be inspected. (*h*)

Dogs.—Metropolitan.—Constables may destroy dogs suspected to be rabid, or when detained for contravention of muzzling order, after three days. (*i*) *Dogs.*

Fairs.—Metropolitan.—Booths, etc., may be removed from ground when a fair has been declared unlawful. (*k*) *Fairs.*

Gun.—Persons not in Her Majesty's service carrying gun may be requested to produce licence, and on refusal or neglect to do so, to state his name and address. (*l*) *Gun.*

Traffic.—The officer in charge of the police at any fire in the district shall have power to stop or regulate the traffic in any street whenever in his opinion it is necessary or desirable for the purpose of extinguishing the fire or for the safety or protection of life or property. (*m*) *Fires.*

Metropolis.—All constables are authorized to aid the Fire Brigade in the execution of their duties. They may close any street in or near which a fire is burning. (*n*)

GAOLERS

As to criminal prisoners see Part I. (*o*) In cases falling within this class there is generally no power to impose hard labour. (*p*) *Gaolers.*

(*c*) But see as to offences under the Children Act, 1908: 8 Ed. VII. c. 67, ss. 19 and 94.

(*f*) As to Metropolis, 10 Geo. IV. c. 44, s. 9; 2 & 3 Vict. c. 47, ss. 70, 72. As to county and municipal, 19 & 20 Vict. c. 69, s. 6; 45 & 46 Vict. c. 50, s. 227.

(*g*) 33 & 39 Vict. c. 70, s. 16.

(*h*) S. 17.

(*i*) 2 & 3 Vict. c. 47, s. 61; 30 & 31 Vict. c. 134, s. 12.

(*k*) 2 & 3 Vict. c. 47, s. 39; 31 & 32 Vict. c. 106, s. 2.

(*l*) 33 & 34 Vict. c. 57, ss. 7, 9.

(*m*) 7 Ed. VII. c. 53, s. 88.

(*n*) 28 & 29 Vict. c. 90, s. 12.

(*o*) *Ante*, p. 84.

(*p*) See 11 & 12 Vict. c. 43, s. 22; 14 & 15 Vict. c. 100, s. 29; *R. v. Baker*, 7 A. & E. 502; *R. v. Hamilton*, 1901, 1 Q. B. 740.

Debtors. In prisons where debtors are confined they are to be separated altogether from criminal prisoners. (*q*)

First-class misdemeanants. First-class misdemeanants are not criminal prisoners. (*r*)

Persons not sent to hard labour. Persons not sentenced to hard labour are to be divided into three divisions; and those committed in default of payment of a debt or in lieu of distress to satisfy a sum of money adjudged to be paid by order of a Court of summary jurisdiction without hard labour are not to be placed in association with convicted prisoners nor compelled to wear prison dress unless their own clothing is unfit for use. (*s*)

DISEASES OF ANIMALS INSPECTORS

Diseases of animals inspectors. These officers, who are under the orders of the Board of Agriculture, have the same powers as inspectors have under the Act. (*t*) They may, on the representation of a local inspector that the Act or an order or local regulation has not been complied with, detain a vessel, a copy of the representation being delivered to the master. (*u*)

They may for the purposes of any order or regulation under the Diseases of Animals Act 1903 enter any premises and examine any sheep thereon. (*x*)

BURIAL GROUNDS INSPECTOR

Burial grounds. The duty of this officer is to inspect burial grounds in order to ascertain whether the regulations (if any) made by the Secretary of State in respect thereto, have been complied with. (*y*)

Inebriates. This officer also inspects retreats for inebriates for the same purpose. (*z*) In this case non-compliance with the regulations constitutes an offence against the Act. (*a*)

CRUELTY TO ANIMALS INSPECTORS

Cruelty to animals inspectors. These officers visit registered places to secure compliance with the provisions of the Vivisection Act. (*b*) Except under special certificate, experiments must be performed with a view

(*q*) 28 & 29 Vict. c. 126, s. 17.

(*r*) 61 & 62 Vict. c. 41, ss. 4, 6.

(*s*) S. 6. In such cases the person is entitled to discharge on payment to the keeper of the said sum with the costs charges and expenses if any: 11 & 12 Vict. c. 43, s. 28.

(*t*) See *ante*, p. 256.

(*u*) 57 & 58 Vict. c. 57, s. 45.

(*x*) 3 Ed. VII. c. 43, s. 2. As to the

power of officers of the Board under the Adulteration Acts, see 62 & 63 Vict. c. 51, ss. 2, 3; and *Falconer*, 1908, S. C. 40.

(*y*) 18 & 19 Vict. c. 128, s. 8. See *bye-laws, ante*, p. 252.

(*z*) 42 & 43 Vict. c. 19, s. 15; 51 & 52 Vict. c. 19.

(*a*) 42 & 43 Vict. c. 19, s. 17.

(*b*) 39 & 40 Vict. c. 77, s. 10.

to the advancement by new discovery of physiological knowledge by a person holding a licence, but not as an illustration of lectures, nor for the purpose of attaining manual skill. The animal must be under the influence of a sufficiently powerful anæsthetic (which does not include *urari* or *curare*), (c) and if it be seriously injured, be killed before it recovers from the influence thereof.

EXPLOSIVES INSPECTORS

These officers may for the purpose of making necessary *Explosives inspectors.* examination and inquiry, enter, inspect and examine any factory, magazine or store of any explosive, and every part thereof, at all times by day and night, but so as not to unnecessarily impede or obstruct the work therein, and make inquiries as to the observance of the Explosives Act, and all measures and things relating to the safety of the public or of the persons employed therein. And they may enter, inspect and examine any premises registered under the Act, and every part thereof in which any explosive is kept or is reasonably supposed by them to be kept at all reasonable times by day.

They may require the occupier of any such factory, magazine, store or premises, or any person employed therein to give them samples of any explosive or ingredient or substance, (d) paying therefor the market value thereof. (e)

FACORY INSPECTORS

This officer may, on producing, if required, the certificate of *Factory inspectors.* his appointment, (1) enter, inspect and examine at all reasonable times, by day and night, a factory (f) and workshop, (g) and every part thereof, when he has reasonable cause to believe that any person is employed therein, and by day any place which he has reasonable cause to believe is a factory or workshop; (2) take with him in either case a constable, if he has reasonable cause to apprehend serious obstruction; (3) require the production of documents kept in pursuance of the Factory Act, and inspect, examine and copy the same; (4) make necessary examination and inquiry as to whether this and the Public

(c) S. 4. As to Inspectors of Anatomy, see 2 & 3 Will. IV. c. 75, s. 5.

(d) 38 & 39 Vict. c. 17, s. 55; 46 & 47 Vict. c. 3, s. 8; and see *ante*, p. 378.

(e) 38 & 39 Vict. c. 17, s. 76.

(f) *Rogers v. The Manchester Co.*,

1898, 1 Q. B. 344; *Law v. Graham*,

1901, 2 K. B. 327; *Spencer v. Livett*,

1900, 1 Q. B. 498.

(g) *Fullers v. Squire*, 1901, 2 K. B. 209;

Hoare v. Green, 1907, 2 K. B. 315.

Health Acts, have been complied with; (5) enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are educated; (6) examine any person in such factory etc., or school as to matters under the Act, and require them to sign a declaration of the truth of their statements; (7) exercise other necessary powers. (h) In order to ascertain the existence of sanitary defects he may take with him a medical officer of health inspector of nuisances or other officer of the district council. (i)

These powers may be exercised whether or not the factory or workshop is used as a dwelling. They may be extended (by direction of the Secretary of State) to any place of public entertainment at which the employment of a child is for the time being licensed. (k)

Butter, etc.

Any officer of the Board of Agriculture and Fisheries or of the Local Government Board shall have power to enter at all reasonable times any premises registered under the Sale of Food and Drugs Acts or this Act and to inspect any process of manufacture blending reworking or treatment used therein and to take samples for analysis of any butter margarine margarine cheese, milk-blended butter or of any article capable of being used in the manufacture treatment or adulteration of any such article as aforesaid. (l)

If the Board have reason to believe (a.) that on any unregistered premises there is carried on any process of manufacture blending re-working or treatment or any wholesale dealing which under the Sale of Food and Drugs Acts or this Act cannot be carried on except on registered premises or (b.) that on any premises butter is by way of trade either made or stored, and that for the purposes of those Acts inspection is desirable, the Board may specially authorize any officer of the Board to enter the premises and in such case the officer shall have the like powers of entry inspection and sampling as if the premises were registered. (m)

MINES INSPECTORS

Mines inspectors.

These officers (n) may (1) make such examination and inquiry as is necessary to ascertain whether the provisions of the Coal Mines Regulation Act 1887 are complied with; (2) enter, inspect and examine any mine and any part thereof at all reasonable times by day and night, but so as not to impede or

(h) 1 Ed. VII. c. 22, ss. 119, 121. This Act does not apply to private house or room where straw-plaiting, pillow-lace, or glove-making is carried on; or any trade where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living—s. 114. Extended to laundries and certain institutions by 7 Ed. VII. c. 39, ss. 1, 5.

(i) S. 4.

(k) 4 Ed. VII. c. 15, s. 3.

(l) 7 Ed. VII. c. 21, s. 2 (1). See *Hart v. Cohen*, 4 F. 445.

(m) In either case he must if required by or on behalf of the occupier, produce his authority.

(n) As to the powers of Board of Trade Inspectors in case of boiler explosions other than in mines, see 45 & 46 Vict. c. 22, s. 6.

obstruct the working of the mine; (3) examine and make inquiry respecting the state and condition of any mine or part thereof, ventilation, sufficiency of special rules and all measures and things connected with the safety of persons employed in or contiguous thereto, or the care and treatment of the horses and other animals used therein; (4) exercise all other necessary powers. (o)

MERCHANT SHIPPING INSPECTORS

Every officer of the Board of Trade, commanding officer of *Merchant shipping in-* any commissioned ship on full pay, consular officer, registrar *spectors.* general of seamen, chief officer of customs, and shipping master may, where he has reason to suspect that the provisions of the Merchant Shipping Act, or the laws relating to merchant seamen and navigation are not complied with, (1) require the owner, master or any of the crew of a British ship to produce any official log-books or documents, or a list of persons on board; (2) muster the crew; or (3) require the master to answer questions concerning the ship, crew or documents. (p)

Inspectors of the Board of Trade appointed to report (a.) as to accidents to vessels; (b.) whether the Act is complied with; (c.) whether the hull or machinery of steamships are in good condition, may (1) go on board any ship and inspect the same or any of the machinery, boats, equipments, or articles on board thereof, not unnecessarily detaining her; (2) enter and inspect any premises necessary for the purpose of making his report; (3) and require the production of all books, papers, etc. (q)

The surveyors may board any passenger steamship at all reasonable times and inspect the same and all machinery, etc., certificates thereof, not unnecessarily detaining her, and, if necessary, require the ship to be taken into dock for examination. (r)

Medical inspectors for the port may inspect the medicines, etc., three clear days, if reasonable notice be given by the master, before the ship leaves, and are to have all the powers of a Board

(o) 50 & 51 Vict. c. 58, s. 41; 35 & 36 Vict. c. 77, s. 17, is to the like effect, which Act refers to metalliferous mines. An inspector under this latter Act may exercise the powers under the former Act if directed to do so by the Secretary of State: 50 & 51 Vict. c. 58, s. 39. The decision of the Secretary of State that either of these Acts applies to any particular mine is final: s. 71.

(p) 57 & 58 Vict. c. 60, ss. 629, 723.

(q) S. 729. [As to explosives, see 38 & 39 Vict. c. 17, s. 58.] As to inspection of provisions and water for use of the crew, see 6 Ed. VII. c. 48, s. 26.

(r) S. 725. As to life-saving apparatus and as to lights and signals, see s. 4, and load-line, s. 436. See also 6 Ed. VII. c. 48, s. 4.

of Trade inspector. (s) They may also inspect the provisions and water for ships going through the Suez Canal or round Cape Horn or the Cape of Good Hope. (t)

As to pilots, where pilotage is compulsory the pilot is liable for any damage caused by his negligence. (u)

RAILWAY INSPECTORS

Railway inspectors.

These officers may enter and inspect any railway, and all the stations, works, buildings, officers, stock, plant and machinery belonging thereto. (x)

WATER BAILIFFS

Water bailiffs.
Powers.

Any water bailiff (y) may, acting within the limits of his district, on production of the instrument of his appointment, (z) examine any weir, dam, fishing-weir, fishing-mill dam, fixed engine or obstruction on any artificial water-course connected with any salmon river; stop and search on any salmon river any boat barge coracle or other vessel used in fishing or which there is reasonable cause to suspect (a) contains any salmon, and seize any fish, instruments of fishing, or other articles forfeited in pursuance of the Salmon Fishery Acts; and search and examine all nets baskets bags or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught, and seize all fish and other articles forfeited. (b)

By 24 & 25 Vict. c. 109 (the Salmon Fisheries Act, 1861)—

Definition of terms.

4. In this Act, unless there is something inconsistent in the context, the words and expressions hereinafter mentioned shall have respectively the meanings hereby assigned to them; that is to say,

“Salmon” shall include all migratory fish of the genus salmon, whether known by the names hereinafter mentioned, that is to say, salmon, cock or kipper, kelt, laurel, girling, grilse, botcher, blue cock, blue pole, fork tail, mort peal, herring peal, may peal, pug peal, harvest cock, sea trout, white

(s) S. 202.

(t) S. 206. As to emigrants, see ss. 289, 306.

(u) See judgment of Lord Esher, M.R., in *R. v. City of London Court*, 1892, 1 Q. B. 285; *Greenock Co. v. Hardie*, 4 F. 215. As to inspection of chain cables and anchors, see 62 & 63 Vict. c. 23, s. 6.

(x) 34 & 35 Vict. c. 78, s. 4. See 63 & 64 Vict. c. 27, s. 13.

(y) As to police acting in this capacity, see 28 & 29 Vict. c. 121, s. 27.

(z) This is a condition precedent to the

exercise of the power: *Barnacott v. Passmore*, 19 Q. B. D. 75; and see *Cowler v. Jones*, 54 J. P. 660.

(a) As to what is reasonable suspicion, see *ante*, p. 48.

(b) 36 & 37 Vict. c. 71, s. 36, extended to any fresh-water fish by 47 & 48 Vict. c. 11, s. 3, which applies these provisions to all waters frequented by such fish; but not to artificial waters: *Stead v. Nicholas*, 1901, 2 K. B. 163. As to instituting proceedings, see *Pollock v. Moses*, 70 L. T. 378.

trout, sewin, buntling, guiniad, tubs, yellow fin, sprod, herling, whiting, bull trout, whitling, scurf, burn tail, fry, samlet, smoult, smelt, skirling or skarling, parr, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other local name :

“Young of salmon” shall include all young of the salmon species, whether known by the names of fry, samlet, smolt, smelt, skirling or skarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other name, local or otherwise :

“Tidal waters” shall include the sea, and all rivers, creeks, streams, and other water as far as the tide flows and reflows :

“Inland waters” shall mean all waters that are not tidal waters : (c)

“Dam” shall mean all weirs and other fixed obstructions used for the purpose of damming up water :

“Fishing weir” shall mean any erection structure or obstruction fixed to the soil either temporarily or permanently across or partly across a river or branch of a river and which is used for the exclusive purpose of catching or facilitating the catching of fish (36 & 37 V. c. 71, s. 4).

“Fishing mill dam” shall mean a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes :

“Fixed engine” shall include stako nets, bag nets, putts, putchers, and all fixed implements or engines for catching or for facilitating the catching of fish : and any net or other implement for taking fish fixed to the soil or made stationary in any other way not being a fishing weir or fishing mill-dam (28 & 29 Vict. c. 121, s. 39), and any net placed or suspended in any inland or tidal waters unattended by the owner or any person duly authorized by the owner to use the same for catching salmon and all engines devices machines or contrivances whether floating or otherwise for placing or suspending such nets or maintaining them in working order or making them stationary (36 & 37 Vict. c. 71, s. 4).

LAW OF FISHING

Prohibition of certain Modes of destroying Fish

5. Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish, shall incur the following penalties : (that is to say),

(1.) Upon the first conviction a penalty not exceeding five pounds :

(2.) Upon the second conviction a penalty not exceeding ten pounds, and a further penalty not exceeding two pounds for every day during which such offence is continued :

(3.) Upon the third or any subsequent conviction, a penalty not exceeding

(c) By 28 & 29 Vict. c. 121, s. 3, river shall include such portion of any stream or lake with its tributaries and such portion of any estuary sea or sea coast as may from time to time be declared in manner herein-after provided (see s. 5) to belong to such river. A reservoir is not such a

tributary : *Harbottle v. Terry*, 10 Q. B. D. 136 ; *George v. Carpenter*, 1893, 1 Q. B. 505 ; but a tributary of a tributary is : *Evans v. Owens*, 1895, 1 Q. B. 237 ; and so is a mill dam : *Moses v. Iggo*, 1906, 1 K. B. 516.

Penalty on mixing poisonous substances in rivers.

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twenty pounds a day for every day during which such offence is continued, commencing from the date of the third conviction :

But no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the court before whom he is tried that he has used the best practicable means, within a reasonable cost, to render harmless the liquid or solid matter so permitted to flow or to be put into waters ; but nothing herein contained shall prevent any person from acquiring a legal right in cases where he would have acquired it if this Act had not passed, or exempt any person from any punishment to which he would otherwise be subject, or legalize any act or default that would but for this Act be deemed to be a nuisance or otherwise be contrary to law.

Penalty on fishing with lights, spears, etc.

8. No person shall do the following things or any of them; that is to say,

- (1.) Use any light for the purpose of catching salmon :
- (2.) Use any otter, lath, or jack, (d) wire, or snare, spear, gaff, strokehall, snatch, or other like instrument (e) for catching or killing salmon.
- (3.) Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the court before whom he is tried that he intended at the time to catch or kill salmon by means thereof:

And any person acting in contravention of this section shall incur a penalty not exceeding five pounds, and shall forfeit any instruments used by him or found in his possession in contravention of this section ; but this section shall not apply to any person using a gaff as auxiliary to angling with a rod and line.

Penalty on using roe as a bait.

9. No person shall do the following things or any of them; that is to say,

- (1.) Use any fish roe for the purpose of fishing :
- (2.) Buy, sell, or expose for sale, or have in his possession, any salmon roe :

And any person acting in contravention of this section shall for each offence incur a penalty not exceeding two pounds, and shall forfeit all salmon roe found in his possession ; but this section shall not apply to any person who uses or has in his possession salmon roe for artificial propagation or other scientific purposes, with the consent of the conservators, if any, (f) or gives any reason satisfactory to the court by whom he is tried for having the same in his possession.

Penalty on using certain nets.

10. No person shall take or attempt to take salmon with any net having a mesh of less dimensions than two inches in extension from knot to knot (the measurement to be made on each side of the square), or eight inches measured round each mesh when wet ; and any person acting in contravention of this section shall forfeit all nets and tackle used by him in so doing, and shall for each offence incur a penalty not exceeding five pounds ; and the placing two or more nets behind or near to each other in such manner as to practically diminish the mesh of the nets used, or the covering the nets used with canvas, or

(d) Includes any small boat or vessel board or stick used for the purpose of running out baits artificial or otherwise across any portion of any lake or river and whether used with a hand line or as auxiliary to a rod and line or in any other way : 36 & 37 Vict. c. 71, ss. 4, 18.

(e) Does not include a fishing net with an illegally small mesh : *Jones v. Davies*,

1898, 1 Q. B. 405.

(f) 28 & 29 Vict. c. 121, s. 60 ; S. s. 8 & 9 are extended to trout and char by s. 64 and 36 & 37 Vict. c. 71, s. 18, if in a salmon river. See also 41 & 42 Vict. c. 39, s. 5, by which they are extended to waters frequented by salmon trout or char : 47 & 48 Vict. c. 11, s. 4.

the using any other artifice so as to evade the provisions of this section with respect to the mesh of nets, shall be deemed to be an act in contravention of this section. Sect. 10.

11. No fixed engine (*g*) of any description shall be placed or used for catching or for the purpose of facilitating the catching of salmon or detaining or obstructing the free passage of salmon in any inland or tidal waters; and any engine placed or used in contravention of this section may be taken possession of or destroyed; (*h*) and any engine so placed or used, and any salmon taken by such engine, shall be forfeited, and, in addition thereto, the owner (*i*) of any engine placed or used in contravention of this section shall, for each day of so placing or using the same, incur a penalty not exceeding ten pounds; and for the purposes of this section a net that is secured by anchors, or otherwise temporarily fixed to the soil, shall be deemed to be a fixed engine, but this section shall not affect any ancient right or mode of fishing as lawfully exercised at the time of the passing of this Act (*k*) by any person by virtue of any grant or charter or immemorial usage: provided always, that nothing in this section contained shall be deemed to apply to fishing weirs or fishing mill dams. (*l*)

Penalty on placing or fixing fixed engines.

12. The following regulations shall be observed with respect to dams:

Penalty on using certain dams for catching salmon.

(1.) No dam except such fishing weirs and fishing mill dams as are lawfully in use at the time of the passing of this Act, by virtue of a grant or charter or immemorial usage, shall be used for the purpose of catching or facilitating the catching of salmon:

1. Any person catching or attempting to catch salmon in contravention of this section shall incur a penalty not exceeding five pounds for each offence, and a further penalty not exceeding one pound for each salmon which he catches:
2. All traps, nets, and contrivances used in or in connection with the dam for the purpose of catching salmon shall be forfeited:
3. All salmon caught in contravention of the above prohibition shall be forfeited:

And no fishing weir, although lawfully in use as aforesaid, shall be used for the purposes of catching salmon unless it have therein such free gap as is hereinafter mentioned; and no fishing mill dam, although lawfully in use as aforesaid shall be used for the purposes of catching salmon unless it have attached thereto a fish pass of such form and dimensions as shall be approved of by the [board], (*m*) nor unless such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down such pass, but so nevertheless that such pass shall not be larger nor deeper than requisite for the above purposes:

(2.) No person shall catch or attempt to catch, except by a single (36 & 37 Vict. c. 71, s. 4) rod and line, any salmon in the head race or tail race of any mill, or within fifty yards below any dam, unless such mill or dam has attached thereto a fish pass of such form and

(*g*) By 28 & 29 Vict. c. 121, s. 39 this shall include any net or other implement for taking fish fixed to the soil or made stationary in any other way not being a fishing weir or fishing mill-dam.

28 & 29 Vict. c. 121, s. 39.

(*h*) The person destroying is not liable in damages: *Williams v. Blackwall*, 32 L. J. Ex. 174.

(*l*) Stop nets are within these sections: *Gore v. Fishery Commissioners*, L. R. 6 Q. B. 561; but not nets not used peculiarly for catching salmon although in fact fixed to the soil: *Watts v. Lucas*, L. R. 6 Q. B. 226. See also *Olding v. Wild*, 14 L. T. 402; *Holford v. George*, L. R. 3 Q. B. 639; *Rawstorne v. Backhouse*, L. R. 3 C. P. 67.

(*i*) See *Phyn*, 7 F. 47.

(*k*) Or within the four preceding years:

(*m*) Of Agriculture and Fisheries.

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dimensions as may be approved by the [board], and such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down it; and if any person acts in contravention of the foregoing provision,

1. He shall incur a penalty not exceeding two pounds for each offence, and a further penalty not exceeding one pound for every salmon so caught :
2. He shall forfeit all salmon caught in contravention of this section, and all nets or other instruments used or placed for catching the same. (n)

Penalty on company or person not erecting gratings to prevent the descent of salmon into artificial streams.

13. Where salmon or the young of salmon are led aside out of a main stream by means of any artificial channel used for the purpose of supplying towns with water, or for supplying any navigable canal, the company or persons having the control over such artificial channel shall, within six months after the commencement of this Act, put up and shall maintain, at their own costs and charges, a grating or gratings across such channel, for the purpose of preventing the descent of the salmon or the young of salmon, and such grating or gratings shall be placed in such form and manner as may be approved by one of the inspectors in this Act mentioned ; and any company or persons failing to put a grating or gratings in cases where they are required to do so by this section shall incur a penalty not exceeding five pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section ; and any such company or person failing so to maintain the same shall incur a penalty not exceeding one pound for every day during which such failure continues : provided always that no such grating shall be so placed as to interfere with the passage of boats on any navigable canal.

Prohibition of the Destruction of unseasonable Fish

Penalty on taking unclean fish.

14. No person shall do any of the following things ; that is to say,

- (1.) Wilfully take, kill, or injure, or attempt to take (o) any unclean or unseasonable salmon, (p) or young of salmon. (o)
- (2.) Buy, sell, or expose for sale, or have in his possession, any unclean or unseasonable salmon, or any part thereof :

and any person acting in contravention of this section shall incur the following penalties ; that is to say,

- (1.) He shall forfeit any fish taken, bought, sold or exposed for sale, or in his possession ;
- (2.) He shall incur a penalty not exceeding five pounds :

but this section shall not apply—

- (1.) To any person who takes such fish accidentally, and forthwith returns the same to the water with the least possible injury ;
- (2.) To any person who takes or is in possession of such fish for artificial propagation or other scientific purposes, with the consent of the conservators. (q)

15. No person shall do the following things or any of them ; that is to say,

(n) See *Moulton v. Wilby*, 2 H. & C. 25. The Board may order the removal of illegal fishing weirs or mill-dams : 28 & 29 Vict. c. 121, s. 42 ; see *Garnett v. Backhouse*, L. R. 3 Q. B. 30.

(o) 36 & 37 Vict. c. 71, s. 18.

(p) The taker must know them to be unseasonable : *Hopton v. Thirwall*, 9 L. T. 327. To take fish unlawfully they must be alive : *Gazard v. Cooke*, 55 J. P. 102.

(q) 28 & 29 Vict. c. 121, s. 60.

Penalty on taking the young of salmon.

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- (1.) Wilfully take or destroy the young of salmon;
 - (2.) Buy, sell, or expose for sale, or have in his possession, the young of salmon;
 - (3.) Place any device for the purpose of obstructing the passage of the young of salmon;
 - (4.) Wilfully injure the young of salmon;
 - (5.) Wilfully disturb any spawning bed, or any hank or shallow on which the spawn of salmon may be:

and any person acting in contravention of this section shall incur the following penalties; that is to say,

- (1.) He shall forfeit all the young of salmon found in his possession;
- (2.) He shall forfeit all rods, lines, nets, devices, and instruments used in committing any of the above offences;
- (3.) He shall for each offence pay a penalty not exceeding five pounds:

but nothing herein contained shall apply to any person who may have obtained such young of salmon for artificial propagation or other scientific purposes, and nothing herein contained shall prejudice the legal right of any owner to take materials from any stream.

16. If any person wilfully disturbs or attempts to catch salmon when spawning, or when on or near their spawning beds, he shall for each offence incur a penalty not exceeding five pounds; but this section shall not apply to any person who may catch or attempt to catch salmon for the purposes of artificial propagation or other scientific purposes. (7)

Penalty on disturbing fish when spawning.

Restrictions as to Times of Fishing

17. No person shall fish for, catch, or attempt to catch, or kill salmon between the days hereinafter mentioned (which interval is herein referred to as the close season); that is to say, between the first day of September and the first day of February following, both inclusive, except only that it shall be lawful to fish with a rod and line between the first day of September and the first day of November following, both inclusive; and any person acting in contravention of this section shall forfeit any salmon caught by him, and shall in addition thereto incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds in respect of each salmon so caught. (r)

Close time.

20. The proprietor or occupier of every fishery (s) for salmon shall, within thirty-six hours after the commencement of the close season, cause to be removed and carried away, from the waters within his fishery the inscales, hecks, tops, and rails of all cruives, boxes, or cribs, and all planks and temporary fixtures used for taking or killing salmon, and all other obstructions to the free passage of fish in or through the cruives, cribs, and boxes within his fishery; (t) and if any proprietor or occupier omits to remove and carry away in manner aforesaid any things hereby required to be removed and carried away he shall incur the following penalties; (that is to say,)

Removal of fixed engines during close time.

- (1.) He shall forfeit all the engines or other things that are not removed and carried away in compliance with this section;
- (2.) He shall, for every day during which he suffers such things to remain

(r) Extended to trout and char in a salmon river from 2nd October to 1st February—any trout or char so caught to be forfeited: 28 & 29 Vict. c. 121, s. 64; 36 & 37 Vict. c. 71, s. 18. Not to extend to P.O.

having roe in possession with consent of conservators.

(s) Includes a fishing mill-dam: *Hodgson v. Little*, 16 C. B. N. S. 198.

(t) See *Rossiter v. Pike*, 4 Q. B. D. 24.

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Weekly close
time.

unremoved beyond the period prescribed by this Act, pay a sum not exceeding ten pounds.

21. No person shall fish for, catch, or kill by any means other than a rod and line, any salmon between the hour of twelve of the clock at noon on Saturday and the hour of six of the clock on Monday morning; and any person acting in contravention of this section shall forfeit all fish taken by him, and any net or moveable instrument used by him in taking the same, and in addition thereto shall incur a penalty not exceeding five pounds, and a further penalty not exceeding one pound in respect of each fish so taken between twelve of the clock at noon on Saturday and six of the clock on Monday morning; but nothing in this section contained shall compel the owner of any putts or putchers to remove or draw up the same during such time as is mentioned in this section, or subject him to a penalty, so that he lets down a net in such manner or uses such other device as the [board] approves for the purpose of preventing salmon passing into the putts or putchers during such time as aforesaid. (u)

A free passage
to be left
through cribs,
or traps
during weekly
close time.

22. The proprietor or occupier of every fishery shall, between twelve of the clock at noon on Saturday and six of the clock on the Monday morning following, maintain a clear opening, of not less than four feet in width from the bottom to the top, through all cribs, boxes, or cruives used for taking salmon within his fishery, so that a free space of that width is effectually secured for the passage of fish up and down through each box, crib, or cruiue, whether used for the purpose of fishing or not; and shall, for the purpose of maintaining such opening, remove the inscales and rails of all such boxes, cribs, or cruives; and any person acting in contravention of this section shall incur the following penalties:—

- (1.) He shall for each offence pay a sum not exceeding five pounds, and a further penalty not exceeding one pound for each fish so taken:
- (2.) He shall forfeit every fish caught in contravention of this section.

Fish Passes

25. [Fish passes to be attached to future dams. If not, work may be done by (board) and expense recovered summarily from person in default. The work must not injuriously affect any navigable river canal or inland navigation. Fish passes may be temporarily removed for the purpose of repairing or altering a dam.]

Free gaps in
fishing weirs.

28. (4.) No person shall place any obstruction use any contrivance or do any act whereby fish may be scared deterred or in any way prevented from freely entering and passing up and down a free gap at all periods of the year . . . not to apply to a temporary bridge or board used for crossing the free gap and taken away immediately when a person has crossed the same.

(u) By 36 & 37 Vict. c. 71, s. 4, annual close season and weekly close season shall mean that for all kinds of salmon fishing except by rod and line, respectively applicable to and in force in the fishery district or place in which any offence charged shall be committed. Close season for rods shall mean and include the annual season during which at any particular place it is or shall be unlawful at that place under the provisions of the Salmon Fishery Acts 1861 to 1873 to fish for kill take or destroy or attempt to kill take or destroy any salmon with a single

rod and line.

By 42 & 43 Vict. c. 26, s. 2, notwithstanding anything in the Salmon Fishery Acts 1861 to 1876 contained the annual close season for putts and putchers shall commence on 1st September and terminate on 1st May inclusive. None of the provisions of the said Acts as to the weekly close season shall apply to putts or putchers.

Where persons fished during prohibited hours but caught nothing the net was forfeited: *Ruther v. Harris*, L. R. 1 Ex. D. 97.

By 36 & 37 Vict. c. 71 (the Salmon Fisheries Act, 1873)—

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Restrictions as to Certain Modes and Times of Taking and Selling Fish

14. Any person who shall shoot or work any seine or draft net for salmon in a river across the whole width or more than three quarters of the width thereof within 100 yards from the nearest point in the line of shot of any other seine or draft net worked in like manner and already shot or being worked in such river before such last-mentioned net is fully drawn in and landed—[is liable to a penalty].

Draft net not to be shot within 100 yards of another.

15. No person between the 1st January and the 24th June inclusive shall hang fix or use in any salmon river any baskets nets traps (x) or devices for catching eels (y) or place in any inland water any device whatsoever to catch or obstruct any fish descending the stream; or shall at any time place upon the apron of any weir any basket trap or device for taking fish except wheels or leaps for taking lamperns between the 1st August and the 1st March . . . Nothing herein contained shall extend to prohibit the use of eel baskets not exceeding in any part ten inches in diameter constructed so as to be fished with bait and not used at any dam or weir.

Eel baskets.

16. No person shall during the annual or weekly close season in any year place any obstruction use any contrivance or do any act for the purpose of deterring salmon from passing up a river . . . provided always that nothing in this section shall apply to any kind of fishing for fish other than salmon legally practised in any river.

Interference with salmon in close season.

17. No person shall catch or kill or attempt to catch or kill except with rod and line or scare or disturb or attempt to scare or disturb any salmon within 50 yards above or 100 yards below any weir dam or artificial obstruction which hinders or retards the passage of salmon or in any waters under or appurtenant to any mill or in the head race or tail race of any mill or in any wash race or pool communicating with such mill race or in any artificial channel connected with such weir or obstruction; and no person shall fish with rod and line in such a manner or such a place near such weir or obstruction as to wilfully scare or hinder salmon from passing through any fish pass or over any part of such weir or obstruction usually available to salmon for the purposes of a passage. Any person acting in contravention of this section shall incur [a penalty] . . . and shall forfeit all boxes baskets nets rods implements or devices used or placed for catching the same; provided that nothing in this section shall be deemed to apply to any legal fishing mill-dam not having a crib box or cruipe or to any fishing box coop apparatus net or mode of fishing in connection with and forming part of such weir or obstruction for purposes of fishing [nor to an approved fish pass until compensation paid to the owners].

Fishing within forbidden limits of weir or mill race.

19. No person shall buy sell or expose for sale or have in his possession for sale any salmon or part of any salmon between the 3rd September and 1st February. Any person acting in contravention of this section shall forfeit any such salmon. . . . But nothing herein contained shall apply to any person buying selling or exposing for sale or having in his possession for sale any salmon which has been cured salted pickled or dried beyond the limits of the United Kingdom or within such limits between 1st February and 3rd November or any clean fresh salmon caught within the limits of this Act provided its capture by any net instrument or device other than a rod and line was lawful at the time and in the

Selling fish in close time.

(x) See *Briggs v. Swanwick*, 10 Q. B. D. 510.

(y) Repealed as to fry of eels: 39 & 40 Vict. c. 34, s. 1.

Sect. 19. place where it was caught or to any clean fresh salmon caught at any time beyond the limits of this Act provided its capture by any net instrument or device other than a rod and line if within the United Kingdom was lawful at the time and in the place where it was caught [the burden of proving this to be on such person].

Trout or char. 20. No person shall buy sell or expose for sale or have in his possession for sale any trout or char between 2nd October and 1st February. Any person acting in contravention of this section shall forfeit any such trout or char. (z)

Taking salmon without licence. 22. [By this section a penalty is provided for taking salmon without a licence.] (a)

Illegally fishing at night. 38. If any person between the expiration of the first hour after sunset and the beginning of the last hour before sunrise illegally takes or kills salmon [trout or char] or is found on or near any salmon river (b) with intent illegally to take or kill salmon trout or char or having in his possession for the capture of salmon trout or char any instrument prohibited by the Salmon Fishery Acts 1861 to 1873 it shall be lawful for any water bailiff together with any assistants to seize and apprehend any such offender without warrant and to deliver him as soon as may be into the custody of a peace officer in order to his being conveyed before two justices.

Weirs and Fish-Passes

Injuring fish pass. 48. Any person wilfully altering or injuring any fish pass or doing any act whereby fish are obstructed or liable to be obstructed in using such fish pass or whereby such fish pass is rendered less efficient or altering the bed or banks of the river so as to render any fish pass less efficient or using any contrivance or doing any act whereby fish are in anywise liable to be scared hindered or prevented from passing through such fish pass [is rendered liable to a penalty].

54. [Where conservators in executing the powers of the Acts have caused any damage to or injuriously affected any land or other hereditaments by reason of the making or maintaining of any fish pass grating or other work compensation to be paid, to be settled up to £50 by two justices, otherwise by arbitration.]

Gratings to prevent Fish entering Watercourses

60. [Fishery board may with consent of board of agriculture and fisheries place gratings at mouths of streams in which salmon or their spawning beds are from the nature of the channel liable to be destroyed, but so that no water rights used or enjoyed for the purposes of manufacture or agricultural purposes or drainage or navigation shall be prejudicially interfered with thereby.]

By 41 & 42 Vict. c. 39 (The Freshwater Fisheries Act, 1878)—

Close season for freshwater fish. 11. (1.) In this section the term freshwater fish includes all kinds of fish (other than pollan trout and char) which live in fresh water except those kinds which migrate to or from the open sea. (c)

(2.) The period between the 15th March and 15th June both inclusive shall be a close season for freshwater fish.

(z) See *Williams v. Long*, 57 J. P. 217.

(a) See also 28 & 29 Vict. c. 121, ss. 35, 36.

(b) Extended to any freshwater fish and to all waters frequented by such fish: 47 & 48 Vict. c. 11, s. 3.

(c) Other than eels. But nothing here-

in contained shall be deemed to authorize angling for eels during the close season mentioned in such section: 49 & 50 Vict. c. 2, s. 1. The conservators may exempt any district from the operation of these three sub-sections: 41 & 42 Vict. c. 39, s. 11 (7).

(3.) If any person during this close season fishes for catches or attempts to catch or kill any freshwater fish in any river lake tributary stream or other water connected or connecting with such river he shall . . . be liable to a fine not exceeding 40s. Nothing in this sub-section shall apply

(a.) To the owner of any several or private fishery where trout char or grayling are specially preserved, destroying within such fishery any freshwater fish other than grayling.

(b.) To any person angling in any several fishery with the leave of the owner of such fishery or in any public fishery under the jurisdiction of a board of conservators with the leave of the said board.

(c.) To any person taking (d) freshwater fish for scientific purposes.

(d.) To any person taking (d) freshwater fish for use as bait.

(4.) If any person during this close season buys sells or exposes for sale or has in his possession for sale any freshwater fish (e) he shall [be liable to a penalty].

(8.) The provisions of the Salmon Fishery Acts 1861 to 1876 as to legal proceedings offences and penalties under those Acts shall apply to those under this section.

By 47 & 48 Vict. c. 11 (The Freshwater Fisheries Act, 1884)—

7. Any person who unlawfully and maliciously puts any poison lime or noxious material in any water frequented by freshwater fish (f) with intent thereby to destroy any of the fish that may then be or may thereafter be put therein [is liable to a penalty]. Use of noxious substances.

By 55 and 56 Vict. c. 50 (The Salmon and Freshwater Fisheries Act, 1892)—

3. During the period between 3rd September and 1st February both inclusive no person shall consign or send by any common or other carrier any salmon trout or char (g) unless the package (h) containing the same shall be conspicuously marked by painting or branding the word salmon trout or char respectively on the outside thereof and during such period any officer of customs any officer of any board of conservators acting within the area of the jurisdiction of such board any officer of a market authority acting within the area of the jurisdiction of such authority any officer appointed for that purpose in writing by the Board of Agriculture or any officer appointed in writing by the Fishmongers Company at any place may open any package so consigned or sent or brought to any place to be so consigned or sent and suspected to contain salmon trout or char and if such package is found to contain salmon trout or char and is not marked in accordance with this section or if there is reasonable cause to suspect that the salmon trout or char contained in any marked package is being dealt with contrary to law may detain such package and the contents thereof until proof is given in manner provided by law that such salmon trout or char Consignment of salmon, trout, and char.

(d) In any several fishery with the leave of the owner of such fishery or in any public fishery except where such taking in a public fishery is prohibited by a byelaw of any conservators: 47 & 48 Vict. c. 11, s. 5.

(e) Applies to fish caught beyond the limits of the United Kingdom: *Price v. Bradley*, 16 Q. B. D. 148.

(f) Any fish living permanently or temporarily in fresh water exclusive of salmon: s. 5.

(g) Includes part of any such fish respectively: s. 6.

(h) Includes any box basket barrel case receptacle sack bag wrapper or other thing in which fish is placed for the purpose of carriage consignment or exportation.

Sect. 3.

is not being so dealt with and in like manner and under like conditions may detain any such salmon trout or char not packed in any package and if before such proof is given any salmon trout or char detained under the provisions of this section becomes unfit for human food may destroy the same.

By 28 & 29 Vict. c. 121 (The Salmon Fisheries Act, 1865)—

Production of
licence.

37. Any . . . conservator on producing a certificate of his being a conservator or any water bailiff appointed in pursuance of this Act on producing the instrument appointing him or any constable if authorized so to do by the justices in quarter sessions may require any person found fishing with a rod and line fishing weir or fishing mill-dam net or other instrument to produce his licence. (*l*)

A licence is required where a man uses any device by which fish may be caught and not only a device for the purpose of catching fish. (*k*)

Powers of
constables.

While acting within their authority water bailiffs have the same powers and privileges as constables. (*l*)

ALKALI WORKS INSPECTORS

Alkali works
inspectors.

These officers may at all reasonable times by day and night, without notice, but so as not to interrupt the manufacture, enter and inspect any work to which the Alkali Works Act applies, and examine any process for the evolution, or condensation, or rendering harmless of noxious gas, and any place where alkaline waste is treated, or any liquid containing acid is likely to come in contact with alkaline waste, and generally to ascertain whether the provisions of the Act are complied with. (*m*) They may apply tests and make experiments. And the owner must render assistance, and furnish on demand plans of any process. (*n*)

CANAL BOATS INSPECTORS

Canal boats
inspectors.

The Inspectors appointed by the Local Government Board may enter any canal boat and generally exercise the same powers as inspectors of the local authority. (*o*)

(i) See also 47 & 48 Vict. c. 11, s. 3.

(k) *Lyne v. Leonard*, L. R. 3 Q. B. 156; *Watts v. Lucas*, 6 ib. 226; *Marshall v. Richardson*, 60 L. T. 605.

(l) 36 & 37 Vict. c. 71, a. 36.

(m) 6 Ed. VII. c. 14, a. 12. Alkali work means every work for (a.) the manufacture of sulphate of soda or sulphate of potash or (b.) the treatment of copper ore by common salt or other chlorides whereby any sulphur is formed, and the act extends to sulphuric acid works, chemical manure,

gas liquor, nitric acid, sulphate and muriate of ammonia, chlorine, muriatic acid, sulphide alkali waste, venetian red, lead deposit, arsenic, nitrate and chloride of iron, bisulphide of carbon, sulphocyanide, picric acid, paraffin oil, bisulphite, tar, and zinc works.

(n) These works are required to be registered by s. 9.

(o) 47 & 48 Vict. c. 75, s. 4, see *ante*, p. 289.

MINISTER

With regard to the office of minister, it should be premised *Minister.* that the freehold of churches and churchyards is in the rector or vicar, (p) and in consequence he is entitled to the possession of the keys, and a duplicate obtained by a churchwarden has been ordered to be given up. (q) "The minister has, in the first instance, the right to the possession of the key, and the church-wardens have only the custody of the church under him. If the minister refuses access to the church on fitting occasions, he will be set right on application and complaint to higher authorities." (r) The possession of the church is in the minister and churchwardens, and no person has a right to enter it when it is not open for divine service except with their permission and under their authority. (s) Subsidiary to this right is that of ringing the bells and playing the organ at, or before, or after divine service or otherwise. The consent of the incumbent is necessary in both cases. (t) *Right to keys of church.* *Bells.* *Organ.*

Every person is by the common law entitled to burial in the churchyard of the parish in which he died (u) without any fee, unless there be a custom to pay such fee. (x) But where a district which has a burial ground becomes a separate and distinct parish, there is no right of burial in the old parish. (y) The intervention of the High Court is confined to the enforcement of the common law right, (z) and does not extend to the mode of burial (a) nor the spot at which it takes place. (b) *Burial.*

Connected with this subject is that of monuments (c) and inscriptions. In the case of monuments, whether they are affixed to the wall or merely placed there as coats of arms are, the consent of the vicar or rector is necessary. (d) But if he remove them after being properly erected, "he is subject to an action to the heir and his heirs in the honour and memory of whose ancestor they were set up." (e) As to gravestones, no consent appears to be necessary for their erection. *Monuments.*

(p) Phil. Ec. Law, 2nd ed., 1383.

(q) *Deudney v. Good*, 7 Jur. N. S. 637; *Ritchings v. Cordingley*, L. R. 3 Ad. & Ec. 113.

(r) Per Sir J. Nicholl; *Lee v. Matthews*, 3 Hagg. Ecc. 173.

(s) Per Sir J. Nicholl; *Jarratt v. Steele*, 3 Phil. 167; and see *Griffin v. Dighton*, 33 L. J. Q. B. 29, 181.

(t) Phil. Ec. Law, 1519. See *Wyndham v. Cole*, 1 P. D. 130.

(u) *R. v. Taylor*, 1 Burn. Ec. L. 258; *R. v. Coleridge*, 2 B. & A. 806.

(x) *Andrews v. Cawthorne*, Willes, 536.

See *Wood v. Headingley*, 1892, 1 Q. B. 713.

(y) *Hughes v. Lloyd*, 22 Q. B. D. 157.

(z) *R. v. Coleridge*, *ubi sup.*

(a) *R. v. Taylor*, *ubi sup.*

(b) *Prideaux, Churchwardens*, 16th ed. 364. See 63 & 64 Vict. c. 15, s. 7, and *Williams v. Briton*, 1905, 2 K. B. 565.

(c) As to fees, see *Young v. Kingston*, 1907, 1 K. B. 416.

(d) *Maidman v. Malpas*, 1 Hagg. Cons. 208. As to inspection of ancient monuments, see 45 & 46 Vict. c. 73.

(e) Co. Inst. 18 b.

With reference to inscriptions, "no person has a right to inscribe on a tombstone what his fancy may suggest, *e.g.*, if such inscription should impugn the doctrine or discipline of the Church of England . . . the inscription would be struck out." (*f*) But the words "The Rev." before H. K., Wesleyan Minister, in an inscription, otherwise unobjectionable, was held not a sufficient justification for the incumbent refusing to allow the tombstone to be erected. (*g*)

Marriage.

It seems doubtful whether there is any obligation on the minister to perform the ceremony of marriage. (*h*)

CHURCHWARDENS

Church-wardens.

Power as to seats.

It is the duty of churchwardens to enforce proper and orderly behaviour during divine service, (*i*) and for this purpose they may direct in what particular seats, whether free or otherwise, persons shall sit. (*k*) There is apparently no such duty when no service is being held. (*l*) Pews belong to the parish for the use of the inhabitants, and cannot be sold or let but by special Act of Parliament. The churchwardens must exercise a just discretion in the allotment of pews. (*m*) A pew can only be appropriated to a house by faculty or prescription. If allotted to an inhabitant who ceases to be such, he cannot let it with and thus annex it to his house. (*n*) No power but the Legislature can deprive the inhabitants of a parish of their general right to be seated in the church; (*o*) and an action for damages will lie against these officers who refuse admission to a parishioner. (*p*) Neither can they dispossess any one of a sitting which he has enjoyed for a time, without giving notice of their intention and offering an opportunity for objection and explanation. (*q*)

Brawling.

These officers may apprehend any person guilty of riotous, violent or indecent behaviour in any church, chapel or churchyard during divine service or otherwise. (*r*) The disturbance must be wilful and intentional, (*s*) but includes the case of a

(*f*) *Brecks v. Woolfrey*, 1 Cart. 887.

(*g*) *Keet v. Smith*, L.R. 4 A. & E. 398.

(*h*) *Davis v. Black*, 1 Q. B. 900; *R. v. Moorhouse James*, 2 Den. C. C. 1.

(*i*) *Burder v. Selmes*, 1 Spinks, 114; *Burton v. Henson*, 10 M. & W. 105; *Hutchins v. Denziloe*, 1 Hagg. Cons. 170, 181.

(*k*) *Asher v. Calcraft*, 18 Q. B. D. 607; *Fuller v. Lane*, 2 Add. 425.

(*l*) *Worth v. Terrington*, 13 M. & W. 781. See *Cope v. Barber*, L. R. 7 C. P. 404.

(*m*) *Wyllie v. Mott*, 1 Hagg. Ec. 28.

(*n*) *Ibid.*, 39, 34; *Phillips v. Halliday*, 1891, A. C. 228; *Stocks v. Booth*, 1 T. R. 428.

(*o*) *Astley v. Biddle*, 1 Hagg. Cons. 318, n.

(*p*) *Taylor v. Timson*, 20 Q. B. D. 671.

(*q*) *Horsfall v. Holland*, 6 Jur. N.S. 278. As to collections, see *Howell v. Holdroyd*, 1897, P. 198.

(*r*) 23 & 24 Vict. c. 32, ss. 2, 3, *ante*.

(*s*) *Williams v. Glenister*, 2 B. & C. 699.

person persisting in going to one part of the church when directed to sit in another, (t) or making objection to candidates for ordination not being impediment or notable crime, (u) and may be committed by a clergyman. (x)

They may also arrest persons molesting any clergyman ministering or celebrating any sacrament or other divine rite or service. (y) This does not apply to the case of a clergyman collecting alms after the service is over. (z)

They may pull off a man's hat irreverently worn. (a) But before a person is assaulted he should be requested to retire. (b)

OVERSEERS

Every overseer or relieving officer having knowledge that any person wandering at large within the parish is deemed to be a lunatic may apprehend such person and take him before a justice. (c) If the officer is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic with regard to whom it is his duty to take any proceedings under the Lunacy Act, that the alleged lunatic should, before any such proceedings can be taken, be placed under care and control, he may remove the alleged lunatic to the workhouse, where he may be detained for three days, or on a proper certificate for fourteen days (d) or more. (e) Workhouse officers may receive chronic lunatics, (f) and within fourteen days of an escape they, or asylum officers, may retake an escaped lunatic. (g)

Overseers.

Power as to lunatics.

Paupers offending against the poor laws are deemed idle and disorderly under the Vagrant Act. (h) These officers may take such offenders before justices without warrant, and, if required to do so, from thence to gaol, and while so acting, are to have all the powers and privileges of constables. (i)

Paupers.

Casuals cannot discharge themselves before 9 a.m. the second morning after admission, nor where admitted more than once in a month before the fourth morning, and during the interval they may be removed by these officers or a constable to the workhouse from the casual ward. (k)

(t) *Asher v. Calcraft*, *ubi sup.*

(u) *Kensit v. St. Paul's*, 1905, 2 K. B. 249.

(x) *Vallancey v. Fletcher*, 1897, 1 Q. B. 265.

(y) 23 & 24 Vict. c. 32, s. 2.

(z) *Cope v. Barber*, L. R. 7 C. P. 393.

(a) 1 Hawk. P. C. c. 63, s. 29; and see *Reynolds v. Monkton*, 2 M. & R. 384.

(b) *Ballard v. Bond*, 1 Jur. 7.

(c) 53 & 54 Vict. c. 5, ss. 15, 20.

(d) S. 24.

(e) Ss. 25, 26.

(f) S. 26.

(g) S. 85.

(h) 34 & 35 Vict. c. 108, s. 7; and see *ante*, p. 399, and *Mile End v. Sims*, 1905, 2 K. B. 200.

(i) *Ibid.*, s. 8.

(k) 45 & 46 Vict. c. 36, s. 4.

II. SCOTLAND

1. WARRANTS AND ORDERS

Scotland.
Warrants and
Orders.

Power to
break doors.

It seems that here in the case of all warrants, whether extract decrees or otherwise, the officer may break open shut and lock-fast places and not only rooms and presses after admission, but the outer door either of the debtor's dwelling-house or office or that of any other person wherein he has reasonable ground to believe that the debtor or his goods are concealed and, notwithstanding, it may be denied that he or they are there. But this does not apply to acts of warding or process caption. (a)

Time of execution.

As to time, execution on Lord's Day is void, (b) and it must not take place before sunrise nor after sunset, though it is sufficient if begun before sunset and finished with daylight. (c)

Where privilege exists, it may be claimed.

The death of the party at whose instance a warrant is granted annuls it. Any poinding or incarceration enforced thereafter is void. (d)

Witnesses.

Poinding requires two witnesses, other executions one. (e)

1. OF SUPERIOR COURTS AT COMMON LAW

MESSENGER-AT-ARMS

Of superior
courts at
common law.
Messenger-at-
Arms.

Adjudication.

Adjudication.—This is the process which answers apparently to *elegit* in England (then called "for debt") (f) and possession (then called "in implement"). (g)

In the first case it is not a private diligence, but one in which all the other creditors have an interest. In the latter, disobedience to the order is presumably a contempt. (h)

(a) Campbell Cit. & Dil. cap. xvi. See *McLachlan v. Bell*, 23 R. 123, and Stewart on Dil. p. 350; 8 Ed. VII. c. 65, s. 23.

(b) Stair IV. 17, 27. See *Middleton*, 6 F. 27.

(c) Ersk. Inst. III. 6, 25; Mor. Dict.

3738.

(d) Stewart, M. 8136.

(e) Camp. *ubi sup.*

(f) Ante, p. 224.

(g) Ante, p. 237.

(h) Paterson's Comp.

Arrestment.—This is the only method of attaching ships and boats and the goods in them. Where the vessel has masts the schedule is attached thereto, and where none to the stern posts. In the case of goods it is executed by delivering the schedule to the master. To move the article subject to arrestment is contempt, unless the arrestment be *jurisdictionis fundandæ causa*. (i) If the debtor give caution, loosing of arrestment will issue. (k)

Meditatio Fugæ.—This writ which is now apparently confined to cases arising under the Debtors Act (l) goes to this officer. It may be executed on Sunday. (m) But married women are not liable. (n)

Personal Poin ding.—This is the diligence for attaching moveable goods and effects in the debtor's possession during his lifetime. (o) If there be resistance, the warrant can be endorsed for caption. (p) It seems to be part of the messenger's duty to see that the extract decree is properly filled up. (q) The old forms before the Personal Diligence Act are still usable, but no part of the expenses, except those of the extract, are exigible from the debtor or his estate. (r)

It is no bar to a poin ding that the goods have been previously arrested by another creditor, and the poin ding will be preferable as a complete diligence, while the other is only inchoate. (s) But there must be no undue delay. (t)

If the debtor or any person offer payment or the appraised value of the goods though less than the debt, the officer must stop the poin ding. He has no authority without express mandate to receive payment, and the debtor may have to pay over again. If there is no mandate, the money is put in a bank in the name of the creditor, and on delivery of the receipt the poin ding must stop. What has been done should be drawn up and signed by the officer and witnesses. The officer is entitled to poind for the expenses. (u)

The stock of a partnership cannot be taken for a debt of an individual partner, nor joint property for a debt of one of the

(i) *Craig v. Brunsgard*, 23 R. 500.

(k) *Camp. Cit. & Dil.*; and see 41 & 42 Vict. c. 73, *ante*, p. 239, and *Stewart*, p. 204.

(l) 45 & 46 Vict. c. 42; *Kidd v. Hyde*, 9 R. 803. It is only ancillary; *Glenday*, 8 F. 24.

(n) *Kempt*, M. 8554; *Wight*, M. 8558.

(o) *Pitcairn v. Doans*, M. 13948.

(p) 1 & 2 Vict. c. 114.

(q) S. 6. See *ante*, p. 10.

(r) *Camp.*

(s) S. 8.

(t) *Ferguson*, 9 R. 687.

(u) *Henderson v. Grant*, 23 R. 661.

(v) *M'Neil v. M'Murphy*, 3 D. 554.

owners. (x) But the circumstance of another person having a personal claim to a share in the articles will not prevent pouncing. (y)

Claim of third person.

Goods which have once been pounced and sold cannot again be repounded for the debt of the same debtor. (z)

Pouncing to what applicable.

The pouncing is applicable to all kinds of moveables, with the exception of ships and boats and goods on board them. Effects in the actual possession of a debtor, as well as those belonging to him in the hands of a third party, of which the debtor remains constructively the possessor, may be taken. Moveables in the debtor's possession are presumed to be his property. (a) If a third party claim them the officer may examine on oath, but should always ascertain the value. He then states the fact in his execution, and the Court determines the question of property. (b)

It is not certain that bank-notes or money on the debtor's person may be taken. (c) Growing corn when ripe or approaching maturity may be, but not otherwise, (d) and a green crop can probably not be taken when there is an agreement to consume it on the land. Machinery, which may be removed without injury, may be taken; but not debts. Goods may be, though another may have a temporary right to them, as furniture let to a tenant, but the pouncing cannot be made effectual by sale till the temporary right is at an end.

What may not be taken.

By 1503, c. 98, no horses, oxen or other goods pertaining to the plough are to be pounced in time of tillage where other moveable effects can be taken. Preventing the officer from pouncing such goods until he has searched for others is not deforcement. (e) Time of tillage is from 15th October to 15th June, old style. (f) The officer must search for, the debtor need not point out such other goods.

Fraudulent assignment.

As to fraudulent assignments, see 19 & 20 Vict. c. 79, ss. 111, 150. By these sections *bona fide* purchasers for value are protected.

Agricultural holdings.

As to agricultural holdings, a tenant six months in arrear of rent may be ejected, (g) and by 49 & 50 Vict. c. 29, s. 3, a crofter a year in arrear. The landlord's hypothec in holdings over two

(x) *Fleming* VII. S. 92; 53 & 54 Vict. c. 39, s. 23.

(y) *Learmont v. Darlington*, 1 D. 884; see *Brenber v. Rutherford*, 4 F. 62.

(z) *Fiddes v. Fife*, Bell's cases.

(a) *Brown v. Fleming*, XIII. D. 373, No. 65.

(b) *Aincaid*, 14 S. 188.

(c) *Alexander*, 4 S. 439.

(d) *Elder v. Allen*, 11 S. 902.

(e) *Ld. Advocate v. Forgan*, Fac. Coll.

App.

(f) *Ersk. Inst.* III. 6, 22.

(g) 8 Ed. VII. c. 64, s. 17.

acres is abolished. (h) Tenants' improvements and fixtures (i) are provided for as in the English Act. (k)

The Friendly Society and Companies Acts apply. (l)

Friendly
societies.
Companies.
Married
women.

By the Married Women's Property Act, 1881, the paraphernalia is not subject to the *jus mariti*, and therefore not affectable by creditors. (m)

As to taxes, see *ante*. (n)

Taxes.

No moveable goods and effects belonging to any person in Scotland at the time any of the duties or land tax became in arrear or were payable shall be liable to be taken by virtue of any poinding sequestration or diligence whatever or by any assignation unless the person proceeding to take the said goods and effects shall pay the duties or land tax so in arrear or payable provided such duties or land tax shall not be claimed for more than one year; and in case the duties or land tax shall be claimed for more than one year then the party proceeding to take the said goods and effects after paying the duties and land tax for one whole year may proceed as he might have done if no duties and land tax had been claimed. But if the said party refuses to pay the duties and land tax for one year the duties and land tax so claimed shall be recovered by poinding distraining and selling the said moveable goods and effects notwithstanding under warrant obtained in conformity with the provisions contained in section 97. (n)

Where effects are liable to the hypothec for rent the landlord is entitled to stop the poinding if attempted to be executed before the term of payment of the rent unless unobjectionable security for the whole rent be given, though that exceed the debt claimed. (o) After the term of payment it is sufficient if the poinder leave enough effects to pay the rent, (p) because the landlord is then able to make his hypothec effectual. On the poinding creditor paying or securing the rent, he is entitled to an assignment of the landlord's right. (q) The general hypothec or that on stock lasts only for three months after the rent falls due, but that on corn till the rent be paid. (r) Whether in case of a farm it extends to household furniture or agricultural implements is doubtful. (s)

Hypothec.

If there be no payment the officer declares the goods to be the creditor's, and orders them to remain in the same custody

Sale or delivery.

(h) 43 Vict. c. 12.

(i) 8 Ed. VII. c. 64, ss. 1 and 20. As to damage by game, s. 9, unreasonable disturbance, s. 10, and market gardens, s. 29.

(k) As to crofters and cottars, see 49 & 50 Vict. c. 29, ss. 8, 9, and see *ante*, pp. 229, 230.

(l) *Ante*, pp. 232, 233, and as to effect of winding-up, see 49 Vict. c. 23, s. 3. As to Railways, 30 & 31 Vict. c. 126, s. 4, is to the same effect as the English Act.

(m) 44 & 45 Vict. c. 21; Ersk. Pples. 66.

(n) P. 234 and see also p. 35, and 47 & 48 Vict. c. 62, s. 7.

(o) *Pringle v. Scott*, M. 6216.

(p) *Hay v. Keith*, M. 6188.

(q) *Crawford*, M. 10531. See *Wyllie*, 1907, S. C. 686.

(r) See *Hepburn*, M. 6205.

(s) 11, Bell Com. 29, 33.

Bankruptcy. until warrant from the Court to sell. (t) If not sold they are delivered to the creditor. (u) The valuation should be accurate and the particulars minute. (x) The effect of bankruptcy within sixty days, or four months after, is apparently to make all poidings rank *pari passu*. (y)

Poiding of the ground. *Poiding of the Ground*.—This diligence proceeds on a *debita fundi*, and affects the moveables on the lands to which the debt attaches. The effect is to give the user a right to the rents, but he cannot in virtue of it assume the natural possession of the lands.

Priority. In a competition of poiding of this kind the superior poiding for unpaid feu duties and casualties will be preferred. And the collector of poor rates has a preference over any poiding creditor. (z) Where there is no such ground of preference the creditors rank *inter se*, not according to priority of poiding, but of infestment, and if that is of the same day, then of citation. (a) Though the moveables have been previously poided by a personal creditor, if they have not been sold or carried off the lands, this diligence is still competent, and will give a preference to the real creditor, not only over the creditor of the landlord but of the tenant, where such a creditor has poided. (b)

What may be taken. The goods falling under it must be those of the owner or the tenants: (c) other goods on the land are not subject to it. (d) By 1469, c. 36, the goods of tenants cannot be poided for their landlord's debt to a greater extent than the amount of the term's rent due by the tenant or the arrears which may be due at the time. (e) Only those goods which are on the ground at the date of serving the summons (f) and belonging to the debtor (g) are liable.

Rents. In order to ascertain the rents the officer may call for the tacks, and them failing take the tenant's oath thereon. (h) If the rent be payable in grain he may ascertain the amount in money by the oaths of valuers according to the price at the time.

Third parties. Third parties' claims are to be treated as under personal poiding.

(t) *Kerly*, 5 D. 860; *Macvicar*, 19 D. 948; *Simpson*, 16 R. 131.

(u) *McKinnon*, 4 Macph. 852.

(x) *McKnight v. Green*, 13 S. 342.

(y) 19 & 20 Vict. c. 79, s. 12.

(z) *Property Investment Co.*, 15 R. 885.

(a) *Athole Hydro Co.*, 13 R. 818.

(b) II. Ross 442.

(c) *Campbell's Trustees v. Paul*, 13 S. 237.

(d) *Edwards*, 11, 7, 1628.

(e) *Brown*, 22 D. 273.

(f) *Urquhart*, 10 R. 991.

(g) *Thomson*, 9 R. 430.

(h) *Stair* II. 5, 9; IV. 17, 23.

By 42 & 43 Vict. c. 40, s. 3, no pointing of the ground not Bankruptcy. carried into execution by sale of the effects sixty days before sequestration shall be available in any question with the trustee, except for the interest of the current half-yearly term and arrears of interest for one year immediately before such term. By 50 & 51 Vict. c. 69, s. 2, this provision shall be applicable to all pointing of the ground by which moveables forming part of, or belonging to, a bankrupt estate, whether administered in Scotland or furth thereof, are sought to be attached or affected, and that whether the debts or securities in respect of which such pointing of the ground shall be brought, shall have been constituted or granted by the bankrupt or any ancestor or predecessor of the bankrupt, or by any other person. The effect of a summons executed after the trustee's confirmation was decided in favour of the pointer. (i)

Process Caption.—This is used to compel the return of process *Process caption.* which has been unduly or contumaciously retained by one of the parties. (k)

Removing of Tenants.—The officer here is empowered under *Removing of tenants.* the extract of lease or decree, as the case may be. (l)

Sequestration.—This is one of the remedies open to a landlord *Sequestration.* for rent. It may be diligence in execution or in security.

In the first case the warrant to the officer is to inventory and appraise the subjects of security and to sell so much as is required for payment of the rent due, with interest and expenses. (m)

In the second case it is merely for payment on the arrival of the approaching term.

Warrants to sell are carried into execution at the sight of the clerk of the Court or other person authorized. (n)

Recall.—Letters of recall issue where the process is found to *Recall.* have been groundlessly laid on. (o)

(i) *Dick's Trustees*, 6 R. 586.

(k) *Watt v. Lighterwood*, 1 R. 21. See *Broatch v. Pattison*, 1 F. 303. As to a warrant to search for and recover a policy in the possession of the wife of a lunatic, see *Romvane*, 7 F. 898.

(l) 7 Ed. VII. c. 51, ss. 34, 35. As to agricultural holdings, see *ante*, p. 230.

(m) There is no obligation on the officer to inquire into the true ownership of the articles: *Singer Co. v. Beale*, 8 F. 29.

(n) A. S. 10, 7, 1839, s. 150. As to a warrant to search for and seize documents in the possession of a recalcitrant trustee, see *M'Alley's Judicial Factor*, 2 F. 1198.

(o) 1 & 2 Vict. c. 114, s. 20.

2. OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW

SHERIFF'S OFFICER

Other than those of superior courts at common law. Sheriff's officer.

Meditatio fugæ.

Bankruptcy Debtors.

The jurisdiction of the sheriff for the purposes of this work appears to be as great as that of the Court of Session, and therefore the duties of these officers are practically the same as those of messengers-at-arms. (*p*)

In meditatione fugæ, however, the writ may be executed anywhere in the kingdom by this officer or by a messenger. (*q*) As to Bankruptcy, see 19 & 20 Vict. c. 79, s. 88; and Debtors, 43 & 44 Vict. c. 34, s. 4.

Where the decree is *ad factum præstandum* a warrant to charge on a seven days *induciæ* is competent although no time is specified in the interlocutor. (*r*)

Small debts.

Under the Small Debts Act the sequestration or poiding and sale shall be carried into effect by the officer in a summary way by getting the effects sequestered or poided duly appraised by two persons, who may also be witnesses, and leaving an inventory thereof with the debtor, and not sooner than forty-eight hours thereafter carrying such effects to the nearest town or village or to the cross or most public place if in a town or village, and selling the same to the highest bidder by public roup, between 11 a.m. and 3 p.m., at such cross or public place, on previous notice of at least two hours by the crier (subject to alteration by the sheriff), or if the effects are not sold the same shall be delivered over at the appraised value to the creditor to the amount decreed for and expenses, if awarded, and the allowances. Any overplus is to be returned to the owner or consigned with the sheriff-clerk if such owner cannot be found. The officer may sell without a licence; (*s*) one witness is sufficient. (*t*)

The process does not lie against an executor for a debt of his testator unless he has assets. (*u*)

CONSTABLES

Constables.

The warrants and orders of justices in civil matters fall in this class. (*v*)

(*p*) 7 Ed. VII. c. 51, sch. 1, r. 10. See *Kennedy*, 14 D. 513. As to Teinds, A. S. 4, 3, 1840.

(*q*) 1 & 2 Vict. c. 119, s. 25.

(*r*) *McLintock*, 4 F. 948.

(*s*) 7 Will. IV. & 1 Vict. c. 41, s. 20.

(*t*) S. 21.

(*u*) *McMahon v. Matheson*, 1 F. 896. As to a landlord's claim for rent, see *Alexander v. Campbell's Trustees*, 5 F. 634.

(*x*) See *Wilson v. McKellar*, 24 R. 254.

The powers under warrants of distress are to be executed as Distress.
under the Small Debts Act, but must be backed in another
county and can only be executed by these officers. (y)

As to recovery of tenements, see 7 Ed. VII. c. 51, s. 34, by Recovery of
which the process is to have the same effect as decret of remov- tenements.
ing and warrant of ejection.

Burgh assessments in arrear may be recovered under warrant Burgh assess-
by which the collector or officers of the Court may poid, seize, ments.
remove and secure any goods or effects of the person in arrear,
and after four days, unless payment be sooner made, may sell
sufficient to raise the amount due, plus 10 per cent., and render
the overplus to the owner. The sale is to be by auction, after
three days' notice. (z) Oppressive proceedings may be appealed
against. (a)

Justices may by order authorize entry into unlicensed Unlicensed
theatres (b) or places for baiting animals, (c) and may verbally theatres, cock-
order arrest. (d) fighting, etc.

A solicitor of an accused person may insist on being present
at a preliminary inquiry. (e)

The Acts relating to explosives, petroleum, industrial schools, Explosives,
weights and measures, and returning officers apply. (f) petroleum,
industrial

By 3 Ed. VII. c. 25, s. 93, a justice may grant warrant to schools,
seize exciseable liquors on unlicensed premises. By 34 & 35 weights, re-
Vict. c. 55, s. 5, the Secretary of State may grant warrant for the turning officer.
removal of lunatic prisoners. And by s. 8 the Commissioners Licensing.
may order the transfer of lunatics from one asylum to another. Lunatics.

GAOLERS

The persons committed under warrants of this class are in the Gaolers.
like position to those in England. (g)

POOR INSPECTORS

The powers for the recovery of poor rates are the same as Poor in-
those relating to taxes, (h) and on bankruptcy they are entitled spectors.

(y) *Greene v. Proc. of Caithness*, 11.
Broun 554.

(z) 55 & 56 Vict. c. 55, ss. 353, 355. In
cases of bankruptcy these assessments are
entitled to preferential payment: s. 370.

(a) S. 354.

(b) S. 402.

(c) S. 405.

(d) *Hume*, ii. 57; *Gillespie*, 24, 12,
1694.

(e) 50 & 51 Vict. c. 35, s. 17; *Goodall*,
2 Wh. 1.

P.O.

(f) See *ante*, pp. 245, 247.

(g) *Ante*, p. 248. Debtors are not to be
detained more than twelve months: 43 &
44 Vict. c. 34, s. 4. Where the sentence
was in excess of the legal period the con-
viction was quashed: *Macleod v. Mac-
kenzie*, 4 F. 13; but there may be more
than one imprisonment: *Walker v. Bryce*,
9 R. 249. See *Harvie*, 1908, S. C. 474.
As to hard labour, see *Anderson*, 9 F. 102.

(h) *Ante*, p. 35.

to preferential payment, (*i*) as also in the winding up of a company, the preferential payments in Bankruptcy Act 1888 being applicable. (*k*)

As to the power to deal with lunatics, see 25 & 26 Vict. c. 54, s. 14, by which the sheriff may make an order for their reception and detention in an asylum, lunatic ward, or private house. (*l*)

RATE COLLECTORS

Rate collectors. In counties the highway assessments may be recovered in the same mode as taxes, (*m*) in burghs as police assessments, (*n*) and on bankruptcy are entitled to preferential payment.

LOCAL OFFICERS

Local officers. Infected persons may under order be removed to hospital, (*o*) and school officers may under order enter premises where it is suspected that a child is employed. (*p*)

EXPLOSIVES AND WEIGHTS INSPECTORS

Explosives and weights inspectors. These Acts apply. (*q*)

WATER BAILIFFS

Water bailiffs. The sheriff or a justice may grant a warrant to search premises at any time mentioned therein, and seize all illegal nets and other instruments. It continues in force for a week. (*r*)

3. ORDERS OF LOCAL AUTHORITIES

Orders of local authorities.
Local Acts.

Local Acts.—Under such an Act it has been held that the offence must be specific. (*s*) Where a penalty was imposed on riotous or disorderly behaviour, this was held to include throwing pease-meal or soot. (*t*) To be convicted of frequenting a person must be seen at the place more than once. (*u*) And a penalty on a prostitute importuning in or near a street was held not to apply to the window of her house. (*x*)

(*i*) 8 & 9 Vict. c. 83, s. 88.
(*k*) *Scottish Drug Depot*, 7 F. 646.
(*l*) See *Strang*, 11 D. 378. As to dangerous lunatics, see s. 15.
(*m*) As to county rates, see 52 & 53 Vict. c. 50, s. 62 and 51 & 52 Vict. c. 62.
(*n*) 41 & 42 Vict. c. 51, s. 86; 57 & 58 Vict. c. 58, s. 29.
(*o*) 60 & 61 Vict. c. 38, ss. 49, 54. See

Mitchell, 20 R. 253; *Sutherland*, 22 R. 95.
(*p*) 41 & 42 Vict. c. 78, s. 12.
(*q*) *Ante*, pp. 247, 250.
(*r*) 31 & 32 Vict. c. 123, s. 26.
(*s*) *Ritchie v. McPhee*, 10 R. 9.
(*t*) *Stephenson v. Lang*, 4 Coup. 76.
(*u*) *Linton v. Clark*, 15 R. 25.
(*x*) *Ford v. Linton*, 6 R. 49.

Byelaws.—Where a road authority made a general bye-law *Byc-laws.* that no waggon attached to a locomotive should carry more than five tons it was held *ultra vires*, and confirmation by the Secretary of State did not make it valid; (y) and so was one prohibiting the affixing of placards to walls and fences without consent of the owner and occupier, (z) and one purporting to create an offence, (a) and one exceeding the authority conferred by the statute. (b)

Highways.—The management of highways is now vested in *Highways.* the local authority. (c) The powers are as follows:—

By 41 & 42 Vict. c. 51 (Roads and Bridges (Scotland) Act, 1878)—

General Management in Counties and Burghs

32. From and after the commencement of this Act, the whole turnpike roads, statute labour roads, highways, and bridges within each county respectively shall form one general trust, with such separate district management as shall be prescribed by the trustees as herein-before provided; (d) and all the roads bridges lands buildings works rights interests moneys property and effects rights of action claims and demands powers immunities and privileges whatever, except as herein-after provided, vested in or belonging to the trustees of any such turnpike roads, statute labour roads, highways, and bridges within the county, shall be by virtue of this Act transferred to and vested in the county road trustees appointed under this Act, who, subject to the qualifications herein-after expressed, shall be liable in all the debts liabilities claims and demands in which the trustees of such turnpike roads, statute labour roads, highways, and bridges are or were liable under any general or local Act then in force, except in so far as such debts liabilities claims and demands may under the provisions of this Act be discharged reduced or extinguished. Consolidation of trusts.

42. The trustees may, on a written report from the board recommending the same, declare that any highway shall cease to be a highway within the meaning and for the purposes of this Act, and that whether another highway shall have been substituted therefor or not; or that any road or bridge which at the commencement of this Act was not maintained out of public funds derived as aforesaid, shall, with the consent of the proprietor, which consent he may effectually give although not an absolute owner, be a highway within the meaning and for the purposes of this Act and as such be added to the list (e) mentioned in the preceding section; but such declaration shall not be competent unless the county road clerk shall have given notice of the same by special advertisement, and by printed notices affixed to the principal door of each church in every parish in which any part of such road highway or bridge is situated, and also affixed in some conspicuous place at both ends of such road highway or bridge, for at least one month before the date of the meeting at which such declaration is made. Highways may cease to be such, and other roads may become highways.

(y) *Smart v. Caddenhead*, 1 Ad. 474.

(z) *Eastburn v. Wood*, 19 R. 100.

(a) *Baillie v. Charleson*, 3 F. 54.

(b) *Rossi v. Edinborough*, 1905, A. C. 21.
See *Dunsmore*, 6 F. 14 and *McGregor*, 1907.
S. C. 21.

(c) 52 & 53 Vict. c. 50, ss. 11, 16.

(d) S. 16. Tolls etc. formerly levied abolished by s. 33. As to what is a highway see s. 3, and *Perth*, 1909, S. C. 114.

(e) Of highways to be made up.

Sect. 43.

A highway
ceasing to be
a highway
may be shut
up.

43. After a road has, as herein-before provided, ceased to be a highway, the trustees may resolve that it shall be shut up, but such resolution shall not take effect until the expiration of six months from the date thereof: Provided always, that thirty days notice of the intention to propose a resolution to that effect shall be given by advertisement in any newspaper usually circulating in the county in which such road proposed to be shut up is situated, and that, upon such resolution being carried, the county road clerk shall give notice of the same by special advertisement, and by printed notices affixed to the principal door of each church in every parish in which any part of such road is situated, and also by printed notices affixed during the said six months in some conspicuous place at both ends of such road.

The determination of the trustees under the preceding section shall be final and not subject to review in any court or in any process or proceeding whatsoever, unless any three ratepayers who shall be dissatisfied with such determination shall, within fourteen days after the date thereof, appeal to the sheriff; and the resolution of the trustees under this section shall in like manner be final and not subject to review, unless any three inhabitants who shall be dissatisfied therewith shall, within six months after the date thereof, appeal to the sheriff, who shall hear and determine the appeal in a summary way, and the decision of the sheriff shall be final and not subject to review, and the expenses of such appeal shall be in the discretion of the sheriff.

The ground occupied by any road which has been shut up in terms of this section shall fall and belong to the person or persons whose lands immediately adjoin thereto, and from whom or his or their predecessor or predecessors the ground so occupied was acquired without payment; and if any question shall arise as to the person or persons to whom such ground should fall and belong, the same shall be disposed of by the sheriff, whose decision shall be final: Provided, that if a price was originally paid for such ground the trustees shall dispose of the same as nearly as may be in the manner herein provided in regard to toll-houses. (f)

Local au-
thority to have
management of
roads within
burghs.

47. From and after the commencement of this Act, the highways and bridges situated within any burgh shall be by virtue of this Act transferred to and vested in the local authority of such burgh; (g) and such local authority shall have the entire management and control of the same, and shall possess the same rights powers and privileges, and be subject to the same liabilities in reference to such highways and bridges (including the construction of new roads and bridges) as the trustees under this Act possess and are liable to in reference to roads highways and bridges (including as aforesaid) in the landward part of the county, including the right to any assets belonging thereto; and shall also have and may exercise with reference to the construction maintenance and repairs of the roads highways and bridges within their respective boundaries, such and the like powers and authorities as they possess with reference to any streets within their respective boundaries: Provided, that the local authority of any burgh not containing more than ten thousand inhabitants according to the census last taken may, by a resolution passed at a meeting summoned for the purpose, on not less than one month's notice, by special advertisement, devolve the management and maintenance of the highways and bridges within the boundaries or forming the boundary thereof upon the trustees of the county within which such burgh or any portion thereof is situated, on payment to such trustees of such an annual sum or upon such terms as may be

(f) *I.e.* to be first offered to adjoining proprietors: s. 44.

(g) The Tramways Act 1870 applies to S. See note thereon, *ante*, p. 294.

agreed upon; and in default of such agreement, on payment of such sum or upon such terms as shall from time to time be settled on the summary application of either party by the sheriff, who shall take into consideration the proportion of traffic from the county passing through the burgh, and all the other circumstances of the case, and whose decision shall be final: Provided also, that any such resolution of the local authority of a burgh may be rescinded, with the consent of and on such terms as may be agreed upon with the county road trustees, and thereupon the original rights powers privileges and liabilities of the said local authority shall revive in full force and effect.

Sect. 47.

Maintenance and Repair of Highways and Assessments therefor

51. The board or any district committee on a written report from the surveyor or district surveyor that it is necessary to shut up for a limited period any highway, for the purpose of repairing the same, may from time to time authorize the shutting up of such highway for such period as they may deem necessary: Provided, that notice of the intention so to shut up a highway shall be given by advertisement in a newspaper circulating in the county or district within which such highway is situated at least fourteen days before such highway shall be so shut up: Provided always, that upon a written report by the surveyor or district surveyor that any highway has become or is about to become dangerous, it may be shut up by the written order of any two members of the board or district committee without any previous notice; but notice shall be immediately given, by advertisement as aforesaid, that it has been shut up.

Roads or highways may be shut up for repairs.

52. [Assessments in counties for management, maintenance, and repair.]

54. [Assessment in burghs for maintenance and repair.]

57. [Power of road authority to recover expenses of extraordinary traffic.]

Miscellaneous

124. Every prosecution shall be begun within six calendar months after the penalty shall have been incurred and not afterwards: Provided, that this shall not apply to any proceedings for the recovery of assessments levied under this Act.

Penalties.

It shall be lawful for any person acting in the execution of this Act, and such other person as any such person shall call to his assistance, or for any person seeing any offence committed against this Act, without any warrant or authority other than this Act, *brevi manu*, to seize and detain any person whose name and place of abode are unknown, and who shall commit any such offence, and take such person without delay before the sheriff or any neighbouring justice of the peace for the county or magistrate of the burgh, as the case may be, where the offence shall have been committed or where such offender shall be seized and apprehended, who shall forthwith examine and discharge or commit such person till caution *de judicio sisti* be found, as the case may seem to require. (*h*)

(*h*) See *Ainslie v. Stewart*, 2 D. 141.

SCHEDULE (C.)

SECTIONS OF 1 & 2 WILL. IV. c. 43, REFERRED TO IN THE
FOREGOING ACT

Section 123. Power to get materials.	80. It shall be lawful for the trustees (i) of any turnpike road, or any person authorized by them, to search (k) for dig and carry away materials for making or repairing such road and the footpaths thereof, or building making or repairing any toll-house bridge or any other work connected with such road, (l) from any common land open uncultivated land (m) or waste, or to deposit mud or rubbish thereon, without paying any surface damages, or anything for such materials, (n) except for stone to be used for building, and to carry the same through the ground of any person, such trustees or other persons authorized by them filling up the pits or quarries, levelling the ground wherefrom such materials shall be taken, or fencing off such pits or quarries so that the same shall not be dangerous to any person or cattle, and paying for or tendering the damage done by going through and over any inclosed or arable lauds for or with such materials mud or rubbish, such damages to be ascertained as hereinafter mentioned; and also it shall be lawful for such trustees and other persons authorized by them as aforesaid to search for dig and carry away any such materials in or out of the inclosed land (o) of any person where the same may be found, and to land or carry the same through or over the ground of any person (such materials not being required for the private use (p) of the owner or occupier of such land, and such land or ground not being an orchard garden lawn policy nursery for trees planted walk or avenue (q) to any house, nor inclosed ground planted as an ornament or shelter to a house, unless where materials have been previously in use to be taken by the said trustees), making or tendering such satisfaction for stones to be used for building, and for the surface damage done to the lands from whence such materials shall be dug and carried away, or over or on which the same shall be carried or landed, as such trustees shall judge reasonable; and in case such trustees and the proprietor or occupier of such lauds shall differ as to the amount of such payments and damages as aforesaid, it shall be competent to the sheriff or justices of the peace for the shire wherein the place from whence such materials shall have been taken, or on which the same shall have been landed or carried, shall he situate, on the application of either party, with an inducie of six days, to hear and determine all questions as to the amount of such payments and damages, and the expenses attending the same: Provided always, that before taking such materials from any inclosed land from which the same shall not previously have been in use to be taken, fourteen days previous notice in writing, signed by two trustees, shall be given to or left at the usual residence of the proprietor and occupier of the laud or quarry from which it is intended to take the same, or his or her known agent, to appear before the sheriff or any two justices of the peace acting for the shire where the said lands are situate, to show
Satisfaction.	
Notice to be given before materials are taken from inclosed lands.	

(i) Now the local authority.

(k) They may search up to a limit of fifty yards but not set up crushing machinery: *Whitson v. Perthshire*, 24 R. 519.

(l) They may go on working so long as there are stones to be got: *Henderson's Trustees v. Fife*, 6 S. L. T. 412.

(m) Includes beds of rivers: *Lyell's Trustees v. Forfar*, 9 R. 792.

(n) Includes chips of stone produced by quarrying: *Yeats v. Taylor*, 1 Macph. 221.

(o) The council it was held could not enter to get at a bed of shingle which was bounded on one side by high-water mark of

a salmon river and on the other by a field which in turn was enclosed by the river and a fence: *Grahame v. Kincardine*, 2 F. 671. See also *Graham v. Renfrew*, 11 D. 682.

(p) The power to take exists whether the trustees have been used to take the materials or not: *Lyell's Trustees v. Forfar*, 9 R. 792. But it must be exercised reasonably having regard to the interests of the proprietor: *Mercer v. Dunfermline*, 2 F. 164.

(q) See *Meldrum v. Horsburgh*, 8 M. 912.

cause why such materials shall not be so taken; and in case such proprietor occupier or agent shall attend pursuant to such notice, or shall neglect or refuse to appear (proof on oath in such case being duly made of the service of such notice), such sheriff or justices shall authorize or prohibit the trustees to take such materials, or make such order as they shall think fit. Sect. 80.

81. It shall not be lawful for any person to take away any materials which shall have been procured or provided or used for the repair or use of any turnpike road, or to take any materials out of any quarry which shall have been opened by any turnpike trustees for the purpose of getting materials for any turnpike road, so as to interrupt or interfere with the workings carried on by such trustees; and every person so offending shall for every such offence forfeit and pay any sum not exceeding five pounds. Penalty on taking away materials provided for repairing turnpike roads.

83. It shall be lawful for the trustees of any turnpike road to make a road through the grounds adjoining to any ruinous or narrow part of any turnpike road (not being an orchard garden lawn policy planted walk or avenue to any house or nursery for trees) to be made use of as a public highway whilst the old road is repairing or widening, making recompense to the proprietor and occupier of such grounds for the damages they may thereby sustain; and in case such trustees and such proprietor or occupier shall differ as to the amount of such damages, it shall be competent to the sheriff or justices of the peace for the shire where such damages or any part thereof shall have been incurred, on the application of either party, with an induciae of six days, to hear and determine all questions as to the amount of such damages, and the expenses attending the same. (r) Power to use adjoining ground as a temporary road.

84. It shall be lawful for the trustees of every turnpike road to make sufficient side drains on any such road, with power to conduct the water therefrom into any adjoining land ditch or watercourse (such land not being the site of any house or garden) in such manner as shall be least injurious to the proprietor or occupier of such land; the said side drains to be maintained at the expense of the trustees. Trustee to make side drains.

85. It shall be lawful for the trustees of every turnpike road to make sufficient ditches along the side of any such road, provided that if the land is inclosed on the side of such turnpike road, such ditch shall be made on the field side of the fence, and also to make proper ditches and outlets from the said side ditches through any lands adjoining any such turnpike road (not being the site of any house or garden) in such manner as shall be least injurious to the proprietor and occupier of such land; and the occupier of such land (unless such land be uninclosed and waste) shall be obliged in all time thereafter to keep clear such side ditches and other ditches or outlets, as well as all such ditches already made along the sides of any turnpike road, when so required by the said trustees or their surveyor; and in case the proprietor or occupier shall neglect or refuse to cleanse such side ditches or other ditches or outlets, when duly required by such trustees or surveyors, such trustees or surveyors are hereby empowered to cleanse such side ditches or other ditches or outlets, and levy the expense thereof from the occupier of such grounds, in the same manner as other penalties by this Act imposed: Provided always, that nothing herein contained shall prohibit any proprietor or occupier from substituting, to the satisfaction of the trustees, any other equally effectual ditch or outlet in place of that constructed by the trustees. Trustees to make ditches.

87. It shall be lawful for any trustee or surveyor of any turnpike road, or other person authorized by the trustees of any such road, hereinafter, to seize and carry off any timber, stone, dung, rubbish, or other matter or thing whatsoever laid or left upon any such road or footpath or on any side drain or ditch of such road, and to sell or otherwise dispose of the same as a forfeiture, in such manner as the trustees shall direct, unless such matter or thing shall be previously seized. Timber, stones, etc., left on roads may be seized.

Sect. 87.

redeemed by the owner thereof by payment of the penalty in such case enacted : Provided always, that the proprietor or occupier of any lands or houses may lay down any materials for building or repairing any house or wall immediately adjoining any turnpike road, such materials occupying one fourth part of such road only, and such proprietor or occupier giving three days previous notice in writing to the clerk or surveyor of the road, and erecting such fence round such materials, and fixing and lighting lamps thereon, in such manner as the trustees may require.

Owners of adjoining lands to cut the hedges and branches of trees prejudicing the road.

If neglected for ten days, surveyor may complain to the justices, who may order them to be cut.

Penalty for neglect after order of justices.

Time of cutting or pruning hedges.

Penalties on persons making encroachments.

88. The owners or occupiers of the lands next adjoining to every turnpike road shall prune and trim their hedges and cut them down to the height of six feet from the surface of the ground, also cut prune or lop the branches of trees bushes and shrubs growing in or near such hedges or other fences, adjacent thereto, (such fences trees bushes or shrubs not being in any garden orchard policy walk or avenue to a house, nor any tree bush or shrub being an ornament or shelter to a house, unless the same shall hang over the road or footpath or any part thereof in such a manner as to impede or annoy any carriage or person travelling thereon,) in such manner that the turnpike road shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such turnpike road to the damage thereof; and if such owner or occupier shall not, within ten days after notice given by the surveyor for that purpose, cut prune and trim such hedges, or cut prune or trim such branches of trees bushes and shrubs, in manner aforesaid, it shall and may be lawful for such surveyor and he is hereby required to make complaint to the sheriff or justices of the peace, who shall grant warrant to summon the occupier of such lands and the owner thereof, or his agent or factor in his absence, ten days after service, to appear and answer the said complaint; and if it shall appear to such sheriff or justices that such occupier or owner has not complied with the requisites of this Act in that behalf, it shall and may be lawful for such sheriff or justices, upon hearing the surveyor and occupier or owner of such land, or an agent authorized to appear for either of them, or in default of their appearance, upon having due proof of the service of such summons, and considering the circumstances of the case, to order such hedges to be cut trimmed and pruned, and such branches of trees bushes and shrubs to be cut pruned or trimmed, in such manner as may best answer the purposes aforesaid; and if the occupier of such lands shall not obey such order within ten days after it shall have been made, and he shall have had due notice thereof, he shall forfeit the sum of two shillings for every twenty-four feet in length of such hedge which shall be so neglected to be cut trimmed and pruned, and the sum of twopence for every tree bush or shrub which shall be so directed to be cut pruned or trimmed; and the surveyor, in case of such default made by the occupier, shall and he is hereby required to cut prune and trim such hedges, and to cut prune or trim such branches of trees bushes and shrubs in the manner directed by such order; and such occupier shall be charged with and pay, over and above such penalties, the expenses of such cutting pruning and trimming. (s)

89. No person or persons shall be compelled, nor any surveyor permitted, by virtue of this Act, to cut or prune any hedge at any other time than between the last day of September and the last day of March, nor to cut prune or lop the branches of any ornamental trees (unless the same shall hang over the road or footpath or any part thereof so as to impede or annoy any carriage or person travelling thereon), if the proprietor or tenant of the lands shall become bound to pay the additional expenses which their remaining uncut or unlopped may occasion the said trustees in keeping any such roads in repair.

90. If any person shall fill up or obstruct any ditch at the side of any turnpike road, or any ditch used for conveying water from the said road, or any side drain thereof, or ditch or drain under the same, or shall encroach by making any dwelling-house or other building, or any hedge ditch or other fence, or in any

other manner whatever, on any turnpike road, or shall make any drain gutter sink or watercourse across under or upon or shall turn or conduct any drain or water across under or upon or in any way break up the surface of any turnpike road, without the consent in writing of the trustees of such road or of their surveyor, such person shall forfeit for every such offence a penalty not exceeding five pounds; and it shall be lawful for the trustees of any such road to cause such dwelling-house or other building hedge ditch or fence drain sink watercourse gutter, or other encroachment, to be taken down or filled up at the expense of the person so offending.

Sect. 90.

91. No houses walls or other buildings (*t*) above seven feet high shall be erected without the consent of the trustees previously obtained in writing, and no new inclosures or plantations shall be made within the distance of twenty-five feet from the centre of any turnpike road, (*u*) without prejudice always to any farther powers and authorities vested in any turnpike trustees thereant by any local Act of Parliament, and no place out of which the trustees of any turnpike road have been in the use of taking materials shall, without the consent of the trustees previously obtained in writing, be in any way shut up or inclosed, under the penalty of five pounds for every such offence, and the expense of demolishing such house wall or building, or of removing such inclosure or plantation; and the sheriff of the county and justices of the peace are hereby authorized and empowered, on application by any one of the turnpike trustees or their clerk, to order such house wall building inclosure or plantation to be pulled down or removed at the expense of the person erecting or making the same, or of the occupier or owner of the ground; nor shall the inclosing of such place out of which materials shall have been taken as aforesaid preclude the trustees of any turnpike road from re-opening and using the same.

No houses, etc., to be erected on the sides of any turnpike road within the distance of twenty-five feet from the centre thereof, without consent of the trustees.

92. It shall be lawful for the trustee of any turnpike road to cause the whole or any part thereof to be watered, and for that purpose to take water from any pond stream or source, with the consent of the owner thereof, or other persons interested therein, and to dig and make ways and passages and erect pumps and engines for such purpose, and to make such compensation as may be agreed upon between the said trustees and such owners or persons as aforesaid.

Power to water roads.

94. The trustees of every turnpike road shall erect sufficient parapet walls mounds or fences, or other adequate means of security, along the sides of all bridges embankments or other dangerous parts of the said roads; and if they shall fail therein it shall be lawful for the procurator fiscal or any commissioner of supply for the shire in which the part of such road complained of is situated, such commissioner finding security to pay expenses of process if he shall fail in his action, to prosecute the trustees of any such turnpike road before the sheriff of the shire in which such road is situated, who shall judge and determine therein in a summary manner, and upon finding the complaint well founded, may compel the said trustees to remedy the matter complained of, and allow the prosecutor the expenses of process; but if such prosecution shall be found groundless, the private prosecutor shall be liable in expenses. (*x*)

Trustees shall erect parapets, etc., where necessary.

96. If any person shall ride upon any footpath or causeway on or by the side of any turnpike road made or set apart for the use or accommodation of foot passengers, (*y*) or shall lead or drive any horse ass mule swine or cattle or carriage of any description, or any wheelbarrow truck or sledge or any single wheel of any waggon cart or carriage apart therefrom, upon any such footpath or causeway; or shall wilfully obstruct or do or cause any injury or damage to be done to the

Penalty on persons committing nuisances.

(*t*) Does not apply to a building to be erected on a site of a house which had been demolished thirty years before: *Macdonald v. Fort William*, 22 R. 551.

(*u*) *Schulze v. Galashiels*, 1895, A. C. 666.

(*x*) This section is not excluded by a local act: *Johnstone v. Glasgow*, 12 R. 596.

The council were held liable for insufficiency of the parapet wall of a bridge: *M^cIntyre v. Lochaber*, 4 F. 18.

(*y*) See *Duffie v. M^cCormick*, 19 R. 89. As to the right of the public to shoot on the foreshore, see *Hop v. Bennewith*, 6 F. 1004.

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same, or to the hedges posts rails or fences thereof; or shall wilfully pull down or damage any bridge wall toll-bar or any building fence or erection made by the trustees of any turnpike road or repaired or repairable by them; or shall break injure remove or displace any tools trestles hars stones materials or other article whatsoever belonging to such trustees, or used on any such road under their authority; or shall haul or draw or cause to be hauled or drawn, upon any part of any turnpike road, any timber, stone, or other thing otherwise than upon a wheeled carriage, or shall suffer any timber, stone, or other thing which shall be carried principally or in part upon a wheeled carriage to drag or trail upon such road; or in ploughing or harrowing any adjacent uninclosed land shall turn any horse plough or harrow in or upon any such road or the side drains or ditches thereof; or shall, in or upon such road, or by the side or sides thereof, or in any exposed situation near thereto, kill slaughter singe scald burn dress or cut up any heast swine calf lamb or other cattle; or if any person driving any carriage, cart, horse, or other beast on the said road, conveying any iron bar or rod, tree, wood, stone, basket, or pannier, or any other matter or thing, except hay and straw, suffer the same to project by more than thirty inches from the side of such horse or other heast, or more than one foot laterally beyond the wheels of such carriage, or so as in any manner to obstruct or impede the passage of any person, or any horse heast or carriage travelling along such turnpike road; or if any person shall carry any timber or other article above twenty-five feet long on any cart or carriage not having more than two wheels; or if any hawker higgler gipsy, or other person shall pitch any tent or encamp upon or by the sides of any part of any turnpike road; or if any person occupying or using a blacksmith's shop foundry smelting house iron or brass work boiler-making work glass work, soda, soap, or chemical work, shall not, by good and close shutters, every evening after it becomes twilight, or otherwise, bar and prevent the light from such shop shining into or upon the said road, and from being dangerous or detrimental to travellers; or if any person shall make or assist in making any fire or fires commonly called bonfires, or shall set fire to or let off or throw any squib, rocket, serpent, or other firework whatsoever within one hundred feet of the centre of such road, (z) or shall discharge any gun pistol or other fire arms, fly kites, or bait or run for the purpose of baiting any bull, or play at football tennis fives cricket or any other game or games upon such road or on the side or sides thereof, or in any exposed situation near thereto, to the annoyance of any passenger or passengers; or if any person shall leave any waggon cart or other carriage whatever upon such road or on the side or sides thereof, without any proper person in the sole custody or care thereof, longer than may be necessary to load or unload the same, except in cases of accident, and in cases of accident for a longer time than may be necessary to remove the same, or shall not place such waggon or other carriage, during the time of loading or unloading the same, or of taking refreshments as near to one side of the road as conveniently may be, either with or without any horse or beast of draught harnessed or yoked thereto; or shall lay any timber stone (a) hay straw dung manure soil ashes rubbish or other matter or thing whatsoever upon such road or on the side or sides thereof, or the footpaths or causeways adjoining; or shall hang or lay any linen clothes or other such article on any hedge or fence of any such road; or shall suffer any water filth dirt or other offensive matter or thing whatsoever to run or flow into or upon such road or footpaths from any house, building, erection, lands, or premises adjacent thereto; or if any person driving any pigs or swine upon such road shall suffer such pigs or swine to root up or damage such road, or the fences hedges banks or copse on either side thereof respectively; or if any person shall after having blocked or stopped any cart, waggon, or other carriage in going up a hill or rising ground,

(z) This must be to the annoyance of the passengers: *Simon v. Reid*, 4 Coup. 220.

(a) Trustees were held liable for dam-

ages so caused: *Mackay v. Waddell*, 2 Mur. 201. There must be an obstruction: *Leish v. Galloway*, 12 R. 5; *Elliott v. M'Dougall*, 1 F. 64.

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cause or suffer to be or remain on such road the stone or other thing with which such cart or other carriage shall have been blocked or stopped; or if any person shall pull down damage injure or destroy any lamp or lamp post put up, erected, or placed in or near the side of any turnpike road, or toll-house erected thereon, or shall extinguish the light of any such lamp; every person offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding fifty shillings over and above the damages occasioned thereby.

97. If the driver of any cart waggon or other such carriage on any turnpike Regulation of road shall ride on the shafts or in or on any other part of such carriage, without drivers. having and holding reins attached to each side of the hidle of each beast of draught drawing such cart or carriage, or shall at any time leave the same travelling on any such road without having some person to guide the beast or beasts of draught drawing the same, or shall allow to go at large any dog that may be attending him, or his waggon cart or other such carriage, or shall not chain or fasten the same to such waggon cart or carriage; or if the driver of any sort of carriage shall not keep to the left or near side of such road on meeting or on being overtaken by any other carriage or any rider, or shall wilfully prevent any other person passing him or his carriage; such driver shall for every such offence forfeit and pay a sum not exceeding five pounds over and above the damages occasioned thereby.

98. If one person act as the driver of more than two carts waggons or other One driver such carriages on any turnpike road, or if the hinder of two carts waggons or may take other such carriages, when under the care of only one person, shall be drawn by charge of two more than one horse, or if the horse of such hinder cart waggon or carriage shall carts. not be attached by a rein to the back of the cart which shall be foremost, and follow in the same line therewith, the horse drawing such hinder cart not being permitted to be further from the foremost than six feet, the owner or driver of every such waggon cart or other carriage shall, for each transgression in any of the points aforesaid, forfeit and pay a sum not exceeding forty shillings.

99. No waggon or cart travelling on any turnpike road shall be driven by any Children not to person who shall not be of the full age of fourteen years, under a penalty for each drive carts, etc. such offence not exceeding forty shillings, to be paid by the owner of such waggon or cart.

100. If the causeways and footpaths of any turnpike road or any part thereof Persons open- shall be opened up by any person or persons, with leave of the said trustees, or ing up or con- otherwise having authority so to do, for the laying of pipes for water gas tunnels veying water or railroads, or for any other purposes whatever, and the same shall not be imme- across the diately thereafter repaired, renewed, and rendered completely sufficient and good roads or cause- by the person or persons opening up the same, to the satisfaction of the said ways must re- trustees or their surveyor, then the said trustees or their surveyor shall have full pair them. power, and they are hereby authorized to execute the necessary repairs (b) on the part or parts of such road or footpath so opened up, and to restore the same completely, and to charge the expense thereof against the person or persons opening up the same, which shall be ascertained by an account under the hands of the said trustees or a quorum of them, or of their clerk or surveyor; and if any damage shall happen to the public from the operations of the persons opening up the road as aforesaid, such persons shall be solely liable for the same, and be obliged to relieve the said trustees thereof and of all expenses attending the same; and in all cases where any injury shall arise to any turnpike road from any drain conduit pipe water matter or thing whatsoever being conveyed across, in, under, or upon, or by anything done upon any part of any such road, by any person having leave or otherwise entitled so to do, and such injury shall not be immediately repaired to the satisfaction of the trustees, they or their surveyor are hereby authorized to repair (b) the same, and charge the expense thereof

(b) The repair must be once for all: on the persons opening up the road: Lan- there cannot be successive repairs charged arkshire, 8 F. 777.

Sect. 100. as aforesaid against the person occasioning the said injury, or for whose uses or purposes the thing occasioning the same shall be done or kept.

Surveyors, etc.,
not to leave
nuisances on
roads.

101. If the surveyor of any turnpike road, or any contractor or other person employed on such road, shall lay on any part of any such road any heap of stones or other materials for the repair thereof, and shall permit the same to remain longer than necessary for the breaking and spreading of such materials; or shall lay on any such road any matter or thing, or shall knowingly permit to remain on any part of any such road any matter or thing, which may endanger the safety of any passenger; or shall dig any pit or make any cut on any turnpike road, without sufficiently fencing (c) the same; such person shall for every such offence forfeit and pay a sum not exceeding five pounds over and above the damages occasioned thereby and expenses; (d) and it shall be lawful for any person travelling along any turnpike road to prosecute for such sum, damages, and expenses in manner herein-after provided: Provided always, that it shall be lawful for any such surveyor, contractor, or other person to have on any such road, during daylight, any trestles or bars in any such manner as the trustees of such road may judge necessary to prevent interruption of the work during the repairing of the road, or to prevent carts or carriages from running in tracks injurious to the road: Provided always, that such trestles or bars shall at all times be placed in such manner as not to be more inconvenient to passengers than may be necessary to prevent interruption to the work, or to prevent carts or carriages from running in tracks injurious to the road. (e)

Proprietors to
fence pits
made near the
roads.

102. If the proprietor or occupier of any lands adjacent to any turnpike road shall dig any pit or make any cut upon or within twelve feet of the side of any such road, and shall leave the same unfenced so as to be dangerous to travellers, and shall not fence the same when required so to do by any two of the trustees of such road, or the procurator fiscal of the shire within which the said pit or cut is situated, such proprietor or occupier shall forfeit and pay a sum not exceeding five pounds for every day such pit or cut shall continue to be unfenced beyond three days after notice shall have been given as aforesaid, and it shall be lawful, after such notice, for the said trustees or procurator fiscal to cause the same to be fenced at the expense of such proprietor or occupier.

No animal to
be pastured on
the roads.

103. If any horse cattle ass sheep swine or other beast of any kind shall be pastured, or left or permitted to remain, or found straying on any turnpike road or the sides thereof (except on such parts of any road as pass through or over any common or waste ground, or land not inclosed, or arable on both sides), the person so pasturing or leaving such beast, or permitting the same to remain, or the person having the charge of such beast, or the owner thereof if such person cannot be found, shall forfeit and pay a sum not exceeding five shillings for every such beast; (f) and it shall be lawful for any trustee of such road, or the surveyor of such trustees, or any other person authorized by them, *hrevi manu*, to seize and detain the same until such penalty and the expenses of process and proceedings shall be paid; and in case the said penalty and expenses shall not be paid within three days after notice of such detention shall be given on the two nearest toll-bars on the said road where such animal shall be found, the said surveyor or other person shall sell the same, with the authority of the sheriff or any justice of the peace for the shire, who are hereby empowered to grant such authority; and after deducting the amount of the said penalty and expenses such surveyor or other person shall pay the surplus, if any, to the owner of such animal so detained.

Side ridges to
be made in
uninclosed
lands.

104. Every person in ploughing any uninclosed land adjoining any turnpike

(c) See *Watson v. Scott*, McF. 140.

(d) Travellers must use reasonable care: *Millar v. Road Trustees*, 4 Mur. 568. See *Kinloch v. Clark*, 4 Macph. 107.

(e) The council are *semble* not liable for the improper conduct of persons employed

by them: *Ainslie v. Stewart*, 15 F. 62, following *Findlater v. Duncan*, 1 Rob. 911.

(f) There is no offence if no negligence on the part of the owner: *Underwood v. Henderson*, 1 F. 9.

road shall make side ridges along the sides of such road of the breadth of twelve feet at the least, under a penalty not exceeding five pounds. Sect. 104.

105. No gate of any park, field, or enclosure whatsoever shall be made to open into or towards any part of any turnpike road, or of any footpath belonging thereto, or he suffered so to open except the hanging post thereof shall be fixed or placed so far from the centre of any part of such road as that no part of such gate shall when open project over any part of such road or of any footpath belonging thereto; and the occupier of any park field or enclosure, having any gate opening outwards contrary to the meaning of this Act, shall, within six days after notice to him or her given, either personally or in writing, from the trustees of any turnpike road, or their surveyor, cause such gate to be hung so that no part of the gate when open shall project over any part of such road or of any footpath belonging thereto; and if such occupier fail so to do, the surveyor of any such road shall cause the gate to be hung as herein-before directed, and charge the expense of making such alteration and hanging such gate against the said occupier, who shall, over and above such expense, forfeit and pay a further sum not exceeding five pounds for such neglect. Gates to open inwards.

106. The trustees of every turnpike road shall cut or cause to be cut all weeds growing on the same or the sides thereof, when inclosed, at a proper season of the year, in order to prevent such weeds coming into seed; and if they fail so to do for eight days after being required by the proprietor or occupier of the adjoining land, by notice in writing given to their clerk or surveyor, such proprietor or occupier may cut the same, and charge the expense thereof against the said trustees. Weeds to be cut by trustees.

107. No person shall hereafter erect any windmill, watermill, steam engine, (g) or limekiln within the distance of one hundred yards from any part of any turnpike road under the penalty of five pounds for every day such windmill water-mill steam engine or limekiln shall continue, unless the same shall be so placed or screened as to prevent damage or detriment to any traveller on such turnpike road by frightening horses or otherwise; nor shall any person hereafter place any skinner's washing pond within the distance of one hundred yards from any part of any turnpike road under a penalty not exceeding five pounds for every day any such nuisance shall continue: Provided always, that nothing herein contained shall be construed to render legal the erection, re-erection, or continuance of any windmill watermill steam engine limekiln or skinner's washing pond in any case where, by the common law, the same shall be a public or a private nuisance. No windmill, etc., to be erected within 100 yards of the turnpike road.

108. The owner of every waggon or cart, and also of every coach, postchaise, or other carriage, let either in the whole or in part to hire, shall paint in a straight line horizontally upon some conspicuous part on the off or right side of his waggon or cart, and upon the panels of the doors of all such coaches postchaises or other carriages before the same shall be used upon any turnpike road, the Christian and surname and place of abode of such person, or the Christian and surname and place of abode of the principal partner or owner thereof, in large legible Roman letters, either of a dark colour upon a light ground or of a light colour on a dark ground, not less than one inch in height, with numbers beginning with number one where more of such carriages respectively than one shall belong to the same owner, and proceeding in regular progression, and shall continue the same thereupon as aforesaid so long as such waggon cart or other carriage shall be used upon any turnpike road; and every owner of any such waggon cart or other carriage using or allowing the same to be used upon any turnpike road without the names and descriptions painted thereon respectively as Owners of waggons, carriages, etc., shall cause their names to be painted thereon.

(g) By 57 & 58 Vict. c. 37, s. 2, this does not extend to a threshing engine provided that a person is stationed on the road and employed for the purpose of signalling the driver of the engine whenever it is

necessary to stop the engine on account of the approach of a horse and of rendering assistance to the person in charge of the horse and that the driver of the engine stops the same when so signalled.

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aforesaid, and every person driving the same, shall forfeit for every such offence a sum not exceeding forty shillings; and every person driving any such waggon cart or other carriage who shall refuse to stop and permit the name to be read or uncovered by any person requiring him so to do, shall over and above forfeit for every such offence any sum not exceeding forty shillings.

By 12 Geo. III. c. 45 (*h*) (the Traffic Regulation (S.) Act, 1772).

No person shall drive any cart, car, or waggon, without the name of the owner, and his place of residence, to be placed on a conspicuous part of such cart; and also the number of such carriage.

1. No person or persons whatsoever shall drive any cart, car, with or without ledges, or any waggon, sledge, or dray, of any kind whatsoever, upon the high roads or streets within that part of Great Britain called Scotland, unless the master or owner of such cart, car, with or without ledges, or such waggon, sledge, or dray, shall place upon some conspicuous part of such cart, car, with or without ledges, waggon, sledge, or dray, the name or names of the real owner or owners of any such carriage, and the place of residence of the real owner or owners of any such carriage, or of the house or farm where the owner or owners generally employ such carriage, in different colours from the body of such carriage; and also the numbers (beginning number one and so upwards) where more carts, cars, or other carriages than one belong to the same person, in order that the driver may the more easily be convicted of any disorder or misbehaviour committed by him or her.

2. [Offenders driving carts, etc., without such names and numbers, to forfeit not exceeding 20s. nor less than 5s. for every offence.]

3. [Names of carriages to be altered with the property, by succeeding owners, within fourteen days after they become owners on penalty not exceeding 20s. and not less than 5s. for every offence.]

4. [Persons placing false names on carriages to forfeit 40s.]

If any chaise driver, etc., shall be found sitting in his chaise without another person on one of the horses; or any carter, etc., shall ride on his carriage without a proper person on foot to guide it; within 6 miles of Edinburgh, 4 of Glasgow, or 2 of any other city, etc., or if any driver shall negligently occasion any hurt or damage, or prevent the passage of any other carriage; or shall not dismount when required by any person apprehending danger; the offender in any of the said cases shall forfeit 10s. if not the owner; and, if the owner, 20s. for each offence.

5. If any chaise driver within that part of Great Britain called Scotland shall be found sitting in his chaise without another person on one of the horses driving the same; or if any carter, drayman, earman, sledgman, or waggouer, or the driver of any other carriage whatsoever (coaches, chaises, phaetons, curricles, chairs, and such other carriages, which are usually driven by a person sitting within or upon the carriage, and such carriages as are respectively drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins of such horse or horses, excepted,) shall ride upon any such carriage, (not having some other person on foot or on horseback to guide the same,) on any street of any city or town, or on any highway within six miles of the city of Edinburgh, or four miles of the city of Glasgow, or two miles of any other city, royal burgh, market town, or burgh of regality, or barony; or if the driver of any carriage whatsoever on any part of any street or highway shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such street or highway, or shall, by negligence or wilful misbehaviour, prevent, hinder, or interrupt the free passage of any other carriage or of his Majesty's subjects on the said highways; or if the driver of any cart, car, dray, or waggon, on any highway whatsoever, when riding on his carriage, shall not dismount (so as the better to guide his horse or horses and carriage) when required by any person apprehending danger from such carriage; every such driver offending in any of the cases aforesaid shall, for every such offence, forfeit any sum not exceeding ten shillings sterling, in

(*h*) Repealed, so far as relates to turn-pike roads, 1 & 2 Will. IV. c. 43, s. 1.

case such driver shall not be the owner of such carriage; and in case the offender be owner of such carriage, than any sum not exceeding twenty shillings sterling.

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6. No driver or drivers of carts, cars, or other carriages above mentioned shall drive their carriage or carriages abreast or alongside of any other carriage or carriages, so as wilfully to obstruct the free passage of such streets and highways respectively, but shall follow one after another upon the same, and shall have bridles or halters upon every horse in any of the above carriages, which bridles or halters upon the foremost horse shall (in all carriages not drawn by more than two horses) be tied with a rope, or some other thing of sufficient strength, to the halter or bridle of the horse behind, and which rope or bridle the driver of every such carriage shall have in his or her hand; and every person offending in the premises shall forfeit a sum not exceeding twenty shillings sterling, nor less than five shillings sterling, for each offence.

7. No drivers of horses or other beasts of burthen, with or without loads, shall drive their horses or other beasts of burthen abreast, so as wilfully to obstruct the free passage of his Majesty's subjects, or to put their persons in danger, but shall, as much as may be, drive them in a line one after another in a regular manner, having a bridle or halter affixed to the head of each horse or beast of burthen; and the driver or owner of any cart, waggon, sledge, coach, chaise, or other carriage shall not be permitted to leave the same upon any street or highway within that part of Great Britain called Scotland, after the horse or horses have been unyoked and taken from such cart, waggon, sledge, or other carriage respectively, except only with respect to such carriage during such reasonable time as the same shall be loading or unloading; nor shall it be allowable to any person or persons to leave stones, lime, timber, rubbish, the bodies of dead horses or of other animals, or other nuisances, upon the streets and highways aforesaid, so as to obstruct the free passage of the same; and every person offending in the premises shall forfeit a sum not exceeding twenty shillings sterling, and not less than five shillings sterling, for each offence.

8. The driver of every loaded horse, horses, or other beasts of burthen, and the driver of every cart, ear, or such like carriage, and every coach, chariot, chaise, and such like carriage, shall be obliged, upon meeting another loaded horse or other beast of burthen, or another carriage, of whatever kind, to make way, by holding or driving to his own left hand, or what is commonly called holding to the near side, and that without distinction, whether the carriages so meeting one another are loaded or unloaded; and every person offending in the premises shall forfeit a sum not exceeding twenty shillings sterling, and not less than five shillings sterling, for every such offence.

10. In all and every of the neglects and offences punishable by this present Act, it shall be lawful for any person or persons aggrieved, and intending to sue for the recovery of the penalties authorized by this Act, upon the authority of the same, and without any other warrant, to apprehend the offender or offenders, and either to carry him, her, or them, or cause him, her, or them to be carried, by the assistance of any peace-officer or other person or persons, before any justice of the peace, or other judge competent, within the bounds where the offences shall be committed; which judge is hereby impowered and required, upon conviction of the offender or offenders, by his or their own confession, or the oath or oaths of one or more credible witnesses, to deal with him, her, or

horses or carriages, drive to the left hand or near side. Penalty not exceeding 20s. nor less than 5s. S. 10. Offenders to be apprehended for offences committed by authority of the Act, and carried before justice or judge competent.

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Persons who shall see offences committed may, by authority hereof, detain horses, carts, etc., till sentence is pronounced; and in case the penalties adjudged shall not be paid, etc., the judge to cause sale to be made of the subjects detained.

Offenders may be committed till satisfactory security be found.

Offenders punishable by the Act for maltreating any person whatever to forfeit 20s. for every offence.

No prosecution to lie unless brought within three months after the offence was committed. Determination of the quarter sessions to be final.

Nothing herein to lessen the jurisdiction of the royal boroughs.

them in manner as herein before directed; and any person or persons who shall see any of the offences before recited committed, shall and may, by the authority of this Act, without any other warrant, seize and detain the horses, carts, cars, sledges, waggons, drays, coaches, chariots, landans, and other such like machines and carriages, and the horses belonging to the several offenders, till such time as sentence shall be pronounced by the competent judge concerning the offence; and in case the penalties adjudged by him in consequence of this Act shall not be paid, or security found for the same, within twenty-four hours after conviction and sentence, then the judge before whom the offender shall be convicted is hereby authorized and required to issue his warrant, directed to a constable or other peace-officer within his jurisdiction, to cause sale to be made of the subject or subjects detained, in case the same happens to be the property of the offender or offenders, for raising the money forfeited by him or them, rendering to such offender or offenders the overplus, after deducting the charges of sale, and the expense of keeping the subject detained, both which shall be determined by the judge before whom the offender or offenders are convicted; and in case the subject or subjects aforesaid do not happen to be the property of such offender or offenders, then the same shall be returned to the lawful owner or owners thereof, and it shall be lawful for the judge aforesaid, and he is hereby required, in case the fine shall not be instantly paid upon conviction or satisfactory security given for the same, to commit the offender or offenders to gaol, there to remain until such time as the fine shall be paid or satisfactory security found for the same, or until the expiration of two months after such commitment.

11. If any person or persons charged with being guilty of any of the offences made punishable by this Act shall, upon the seizure of, or an attempt to seize, under the authority of this Act, his or their persons or property, or the property of others under their care as aforesaid, resist, abuse, or maltreat any person or persons whatsoever, or if any person shall aid or assist him, her, or them in so doing, he, she, or they shall respectively forfeit the sum of twenty shillings sterling for every such last-mentioned offence; the offence to be proved, and judgement to proceed thereupon, in the same way and manner as herein-before provided for in the case of the other before-mentioned offences against this Act.

14. Provided always, that no prosecution under this present Act shall lie against any person or persons whatsoever unless the same shall be brought within three months of the time at which the offence or offences charged was or were actually committed; and that in all cases an appeal shall lie against every sentence or judgement of one or more justices of the peace, made under and by virtue of the powers given by this Act, to the next quarter-sessions of the peace for the county within which the offence was committed, whose determination shall be final; and that the said appeal shall be competent to every person and persons having an interest, and apprehending him, her, or themselves to be aggrieved by such sentence and judgement.

15. Declaring always, that nothing herein contained shall extend, or be construed to extend, to limit, lessen, or take away any of the jurisdictions, powers, and authorities, rights, privileges, and immunities, of any of the cities and royal boroughs within that part of the United Kingdom called Scotland, or of the magistrates and town council of the same, as contained in Acts of Parliament, or charters and other grants from his Majesty and his royal predecessors; nor shall this present Act be any way derogatory to, or in any respect whatsoever be understood to encroach, repeal, or take away the said jurisdictions, rights, or immunities, any thing herein contained to the contrary notwithstanding.

By 60 & 61 Vict. c. 38 (Public Health Scotland Act, 1897)— Sect. 3.

3. In this Act the following words and expressions have the meanings *Public Health.*
herein-after assigned to them, unless such meaning is inconsistent with the Definitions.
context :

The word "Board" means the Local Government Board for Scotland : . . .

The expressions "medical officer of health" and "medical officer" means a
legally qualified medical practitioner appointed by the local authority
under the Burgh Police (Scotland) Act, 1892, or under the Acts repealed 55 & 56 Vict.
by this Act or under this Act : c. 55.

Wherever in this Act the expression "legally qualified medical practitioner"
is used, it shall mean a registered medical practitioner qualified, as the case
may be :

The expression "sanitary inspector" means a sanitary inspector appointed by
the local authority under the Burgh Police (Scotland) Act, 1892, or under
the Acts repealed by this Act or under this Act :

The expressions "veterinary surgeon" and "qualified veterinary surgeon"
mean a member of the Royal College of Veterinary Surgeons : . . .

The word "premises" includes lands, buildings, vehicles, tents, vans,
structures of any kind, streams, lakes, seashore, drains, ditches, or places
open, covered, or inclosed, whether built on or not, and whether public
or private, and whether natural or artificial, and whether maintained or
not under statutory authority, and any ship, lying in any sea, river,
harbour, or other water, or ex adverso of any place within the limits of the
local authority :

The word "land" in this Act and in the Acts incorporated herewith as
after-mentioned, shall include water and any right or servitude to or over
land or water :

The word "ship" includes any sailing or steam ship, vessel, or boat not
belonging to Her Majesty or any foreign Government :

The word "street" includes any highway and any public bridge, and any
road, lane, footway, square, court, or passage, whether a thoroughfare or
not, and whether or not there are houses in such street :

The word "house" means a dwelling-house, and includes schools, also
factories and other buildings in which persons are employed :

The word "factory" includes workshop and workplace :

The word "ashpit" means any receptacle for the deposit of ashes or refuse
matter :

The expression "knacker" means a person whose business it is to kill any
horse, ass, mule, or cattle, not killed for the purpose of the flesh being
used as butcher's meat ; and the expression "knacker's yard" means any
building or place used for the purpose of such business :

The expression "slaughterer of cattle or horses" means a person whose
business it is to kill any description of cattle or horses, asses or mules, for
the purpose of the flesh being used as butcher's meat ; and the expression
"slaughter house" means any building or place used for the purpose of
such business :

The word "owner" means the person for the time entitled to receive, or who
would, if the same were let, be entitled to receive, the rents of the premises,
and includes a trustee, factor, tutor, or curator, and in case of public or
municipal property applies to the persons to whom the management
thereof is entrusted :

The word "occupier" means in the case of a building or part of a building
P.O.

Sect. 3.

the person in occupation or having the charge, management, or control thereof, either on his own account or as the agent of another person, and in the case of a ship means the master or other person in charge thereof:

The word "company" includes commissioners:

The expression "author of a nuisance" means the person through whose act or default the nuisance is caused, exists, or is continued, whether he be the owner or occupier or both:

The expression "common lodging-house" means a house or part thereof where lodgers are housed at an amount not exceeding fourpence per night, or such other sum as shall be fixed under the provisions of this Act, for each person whether the same be payable nightly or weekly, or for any period not longer than a fortnight, and shall include any place where emigrants are lodged and all boarding-houses for seamen, irrespective of the rate charged for lodging or boarding:

The expression "keeper of a common lodging-house" includes any person having or acting in the care and management of a common lodging-house:

The word "cattle" means hulls, cows, oxen, heifers, and calves, and includes sheep, goats, and swine:

The word "dairy" includes any farm, farmhouse, cowshed, milk store, milk shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale:

The word "dairyman" includes any cow-keeper, purveyor of milk, or occupier of a dairy:

The word "burial" includes cremation:

The expressions "day" and "daytime" mean between nine o'clock in the morning and six o'clock in the evening.

PART II**SANITARY PROVISIONS***General Nuisances***Definition of nuisances.**

16. For the purposes of this Act,

- (1.) Any premises or part thereof of such a construction or in such a state as to be a nuisance or injurious or dangerous to health:
- (2.) Any street, pool, ditch, gutter, watercourse, sink, cistern, watercloset, earth-closet, privy, urinal, cesspool, drain, dung-pit, or ashpit so foul or in such a state or so situated as to be a nuisance or injurious or dangerous to health:
- (3.) Any well or water supply injurious or dangerous to health:
- (4.) Any stable, hyre, or other building in which any animal or animals are kept in such a manner or in such numbers as to be a nuisance or injurious or dangerous to health:
- (5.) Any accumulation or deposit, including any deposit of mineral refuse, which is a nuisance or injurious or dangerous to health, or any deposit of offensive matter, refuse, (i) or offal, or manure (other than farmyard manure or manure from hyres or stables, or spent hops from breweries), within fifty yards of any public road wherever situated, or any offensive matter, refuse, or offal, or manure other than aforesaid contained in uncovered trucks or waggons standing or being

(i) As to a nuisance created by a local authority in dealing with refuse, see s. 37.

at any station or siding or elsewhere on a railway or in canal boats so as to be a nuisance or injurious or dangerous to health :

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- (6.) Any work, manufactory, trade, or business, injurious to the health of the neighbourhood or so conducted as to be injurious or dangerous to health, or any collection of rags or bones injurious or dangerous to health :
- (7.) Any house or part of a house so overcrowded as to be injurious or dangerous to the health of the inmates :
- (8.) Any schoolhouse, or any factory which is not a factory subject to the provisions of the Factory and Workshop Acts, 1878 to 1895, or any Act amending the same, (*k*) with respect to cleanliness, ventilation, or overcrowding, and
 - (i.) is not kept in a cleanly state and free from effluvia arising from any drain, privy, watercloset, earth-closet, urinal, or other nuisance, or
 - (ii.) is not ventilated in such a manner as to render harmless so far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or
 - (iii.) is so overcrowded while work is carried on as to be injurious or dangerous to the health of those therein employed :
- (9.) Any fireplace or furnace situated within the limits of any burgh or special scavenging district which does not so far as practicable consume the smoke arising from the combustible matter used therein, for working engines by steam, or in any mill, factory, dyehouse, brewery, hakehouse, or gaswork, or in any manufacturing or trade process whatsoever :
- (10.) Any chimney (not being the chimney of a private (*l*) dwelling-house) sending forth smoke in such quantity as to be a nuisance or injurious or dangerous to health : and
- (11.) Any churchyard, cemetery, or place of sepulture so situated or so crowded or otherwise so conducted as to be offensive or injurious or dangerous to health ; (*m*)

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act : Provided that—

- (a.) a penalty shall not be imposed as herein-after provided on any person in respect of any accumulation or deposit necessary for the effectual carrying on of any business, trade, or manufacture, if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business, trade, or manufacture, and that the best available means have been taken for preventing injury or danger thereby to the public health ; and
- (b.) in considering whether any dwelling-house or part thereof which is also used as a factory, or whether any factory, used also as a dwelling-house, is a nuisance by reason of overcrowding, the court shall have regard to the circumstances of such other use.

17. It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances

Duty of local authority to inspect district for detection of nuisances.

(*k*) See now 1 Ed. VII. c. 22.

49 & 50 Vict. c. 32, s. 9 ; 8 Ed. VII. c. of nuisances.

(*l*) See *Rathie*, 6 F. 5.

67, s. 1 ; and 52 & 53 Vict. c. 21, s. 29,

(*m*) See also 48 & 49 Vict. c. 72, s. 9 ; *ante*, p. 289.

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exist calling for removal under the powers of this Act, and to enforce the provisions of this Act in order to remove the same, and otherwise to put in force the powers vested in them relating to public health, so as to secure the proper sanitary condition of all premises within their district.

Power of entry
to local authority
or their
officers.

18. If the local authority, or medical officer, or sanitary inspector (n) have reasonable grounds for believing that nuisance exists in any premises, such local authority, or medical officer, or sanitary inspector may demand admission for themselves, the chief constable or superintendent of police, or any other person or persons whom the local authority may desire to enter and inspect such premises, and, if necessary, to open up the ground of such premises, or for any or all of them, to inspect the same at any hour between nine in the morning and six in the evening, or at any hour when the operations suspected to cause the nuisance are believed to be in progress or are usually carried on; and may cause the ground or surface to be opened, and the drains to be tested, or such other work to be done as may be necessary for an effectual examination of the said premises: provided always, that if no nuisance be found to exist, the local authority shall restore the premises at their own expense, and if admission be refused, . . . [the sheriff, magistrate, or justice may,] by order in writing, require the occupier or person having the custody of such premises to admit the local authority and others aforesaid; . . . and on being satisfied of failure or refusal, the sheriff, magistrate, or justice may grant warrant to such local authority, officers, or person or persons for immediate forcible entry into the premises; and if no such occupier or person can be discovered, or if no person is found on the premises to give or refuse admission, the local authority or their officers may enter the premises without any order or warrant, and forcibly if need be.

Provided that if no nuisance be found to exist, the local authority shall restore the premises at their own expense.

Any order made by a sheriff, magistrate, or justice, for the admission of the local authority or their officers or other persons under this section shall continue in force until the nuisance has been removed, or the work for which the entry was necessary has been done.

Notice requiring
removal
of nuisance.

20. (1.) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act, the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the author of the nuisance, or, if such author cannot be found, on the occupier or owner of the premises on which the nuisance arises or continues, requiring him to remove the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, and if the local authority think it desirable (but not otherwise) specifying any works to be executed.

(2.) The local authority may also by the same or another notice served on such occupier, owner, or person, require him to do what is necessary for preventing the recurrence of the nuisance, and, if they think it desirable, may specify any works to be executed for that purpose, and may serve that notice, notwithstanding that the nuisance may for the time have been removed, if the local authority consider that it is likely to recur on the same premises.

(3.) Provided that—

(a.) where the nuisance arises from any want or defect of a structural character, or where the premises are unoccupied, the notice shall be served on the owner;

(b.) where the person causing the nuisance cannot be found, and it is clear

(n) See s. 15 as to appointment of substitutes.

that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner of the premises, the local authority may themselves remove the same, and may do what is necessary to prevent the recurrence thereof.

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22. [Proceedings when nuisances are ascertained to exist—order of sheriff or justice.]

26. [Local authority to do works under warrant of sheriff or justice on owner's or occupier's default, or if person causing nuisance cannot be found.]

27. Any matter or thing removed by the local authority in pursuance of this Act may be sold by public roup, after not less than five days notice by printed handbills posted in the locality, except in cases where delay would be prejudicial to health, or in which the matter or thing is not of the value of two pounds or upwards, in which cases the sheriff, magistrate, or justice may, by writing under his hand, order the immediate removal, sale, or destruction of the matter or thing, and the proceeds of the sale shall be retained by the local authority, and applied pro tanto in payment of all expenses incurred under this Act with reference to such nuisance; and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing; and the balance of such expenses shall be defrayed, if such proceeds are insufficient for that purpose, by the author of the nuisance or the owner of the premises.

Articles removed to be sold.

28. Whenever any watercourse, ditch, gutter, or drain along the side of any street, or between or parallel to rows of dwelling houses, shall be used or partly used for the conveyance of any water, sewage, or other liquid or matter from any premises, and cannot in the opinion of the local authority be rendered free from foulness or offensive smell without the laying down of a sewer or of some other structure, such local authority shall and they are hereby required to lay down such sewer or other structure within the limits of their district, or, subject to the approval of the Board, where necessary for the purpose of outfall or distribution of sewage, without their district, and to keep the same in good and serviceable repair; and they may enter any premises for such purposes, and use such part thereof as shall be necessary, and for such use shall pay such damages as may be assessed by the sheriff on a summary application, and to such party as the sheriff may direct: Provided always, that no damage shall be payable to any person who has caused or contributed to cause such watercourse, ditch, gutter, or drain to become foul or offensive, unless such person shall satisfy the sheriff that he had justifiable excuse for so doing; and such local authority are hereby authorized and empowered to assess the owners of all the premises (according to the yearly value thereof) from which then or at any time thereafter any material other than pure water flows, falls, or is carried into the said sewer or other structure, for payment of all expenses incurred in making and maintaining the same, and that either in one sum or in instalments, as they shall think just and reasonable, and after fourteen days notice at the least left with the said owners, if resident within the district, and if not so resident with the occupiers of the said premises, to levy and collect the sums so assessed, with the same remedies in case of default in payment thereof as are herein-after provided with reference to the public health general assessment leviable under this Act. (o)

Foul ditches, etc., may be replaced by sewers.

Offensive Trades

33. (6.) The local authority shall have right to enter any slaughter-house or knacker's yard at any hour by day, or at any hour when business is in

Slaughter-houses.

(o) Ss. 133-138.

Sect. 33. progress or is usually carried on therein, for the purpose of examining whether there is any contravention therein of this Act or of any byelaw made thereunder. (*p*)

Scavenging and Cleansing

Private streets, etc. 39. . . . Where within a special district (*q*) any private street or footway, or part thereof, is not levelled, macadamized, paved, channelled, and made good, to the satisfaction of the district committee (or, where the county is not divided into districts, the county council), such authority may, by notice addressed to the respective owners of the premises fronting, adjoining, or abutting on such street or footway, or parts thereof, as may require to be levelled, macadamized, paved, channelled, and made good, order them to do all such works or any of them, and that within a time to be specified in such notice.

If such order is not complied with, the said authority may, if they think fit, execute the works mentioned therein, and may recover in a summary manner the expenses incurred by them in so doing from the owners in default according and in proportion to the frontage and valuation of their respective premises or, in the case of dispute, in such proportion as may be settled by the sheriff . . . [appeal to the sheriff].

Houses in filthy state to be purified.

40. Where it appears to any local authority that any house or part thereof, or any article of bedding or clothing therein, is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing or purifying of any house or part thereof, or any article of bedding or clothing therein, would tend to prevent or check infectious disease, the local authority shall give notice in writing to the owner or occupier of such house or part thereof to whitewash, cleanse, or purify the same, or any such article, as the case may require.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the local authority may, if they think fit, cause such house or part thereof to be whitewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

Periodical removal of manure from mews and other premises.

42. Notice may be given by any local authority (by public announcement in the district or otherwise) for the periodical removal of manure or other refuse matter from mews, stables, or other premises, except cattle courts, in any special scavenging district, and where any such notice has been given any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits a further accumulation, and does not continue such periodical removal at such intervals as the local authority direct, shall be liable without further notice to a penalty not exceeding twenty shillings for each day during which such manure or other refuse matter is permitted to accumulate, and where in any scavenging district it appears to the sanitary inspector that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matters ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if such notice is not complied with within forty-eight hours from the service thereof, the manure, dung, soil, filth, or matter referred to shall be vested in and be sold and disposed of by the local authority, and the proceeds

(*p*) As to conditions of a licence, see *Darney v. Calder*, 7 F. 239.

(*q*) Formed under the Local Government (S.) Act, 1894.

thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed, and the expenses of removal by the local authority of any such accumulation, if and so far as they are not covered by the sale thereof may be recovered by the local authority in a summary manner from the person to whom the accumulation belonged, whom failing, from the occupier or owner of the premises.

Sect. 42.

Unsound Food

43. (1.) Any medical officer or sanitary inspector or any veterinary surgeon approved for the purposes of this section by the local authority may at all reasonable times enter any premises within the district of the local authority, or search any cart or vehicle, or any barrow, basket, sack, bag, or parcel, in order to inspect and examine and may inspect and examine

Inspection and
destruction of
unsound meat,
etc.

(a.) any animal, alive or dead, intended for the food of man (r) which is exposed for sale, or deposited in any place or is in course of transmission for the purpose of sale, or of preparation for sale; and

(b.) any article, whether solid or liquid, intended for the food of man, and sold or exposed for sale, or deposited in any place or in course of transmission for the purpose of sale or of preparation for sale, (s)

the proof that the same was not exposed or deposited or in course of transmission for any such purpose, or was not intended for the food of man, resting with the person charged; and if any such animal or article appears to such medical officer or sanitary inspector or veterinary surgeon to be diseased, or unsound, or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with summarily by a sheriff, magistrate, or justice.

Provided that in the case of any proceeding under this section with regard to a living animal the medical officer or sanitary inspector, unless he is himself a qualified veterinary surgeon, shall be accompanied by a veterinary surgeon approved as aforesaid.

The police force of each police area shall have power to search carts or vehicles, or barrows, baskets, sacks, bags, or parcels, and to assist generally in executing and enforcing this section. . . .

(3.) Each local authority, or two or more local authorities in combination, may, if they think fit, appoint a place or places within its district or their districts, and fix a time or times at which a veterinary surgeon approved as aforesaid shall attend for the purpose of examining any animal alive or dead which may there be submitted to him, and passing or condemning the same, and such veterinary surgeon shall, on receipt of a fee to be fixed by the local authority or authorities and paid by the owner, examine and pass or condemn in whole or in part any animal or carcase so submitted to him; and if he shall pass the same he shall grant a certificate of passing which shall set forth the name of the owner, the date and hour of examination, and such particulars regarding the animal or carcase as the local authority or authorities may prescribe for the purpose of aiding in the subsequent identification of the same; and if he shall condemn the animal or carcase, or part thereof, the animal or carcase or part so condemned shall be retained and be forthwith destroyed by the local authority or authorities or so disposed of as to prevent it from being exposed for sale or used for the food of man,

(r) See *Nelson v. McPhee*, 17 R. 1.

(s) See also 40 & 41 Vict. c. 42, and 52 & 53 Vict. c. 11, *ante*, p. 291.

Sect. 43. and the owner shall be entitled to the net price realized from the residual product of the carcase or part so condemned, if any, after deducting the expenses of condemnation and destruction. Provided that no carcase shall be submitted for examination, [either under this or the immediately preceding sub-section,] (*t*) unless as a whole carcase, including the thoracic and abdominal viscera, in such manner that the examiner shall be readily able to satisfy himself that the organs are those of the carcase under inspection. . . .

PART III

GENERAL PREVENTION AND MITIGATION OF DISEASE

Infectious Diseases—Notification

Notification of infectious disease. 44. From and after the commencement of this Act the provisions of the Infectious Disease (Notification) Act, 1889, (*u*) shall extend to and take effect in every district in Scotland, whether it has or has not been adopted before the said commencement.
52 & 53 Vict. c. 72.

Infectious Diseases—Prevention

Power to inspect premises where infectious disease supposed to exist. 45. The medical officer may, at reasonable times, in the day time, enter and inspect any house or premises in the district in which he has reason to believe that any infectious disease exists, or has recently existed, and the medical officer may examine any person found on such premises with a view to ascertaining whether such person is suffering, or has recently suffered, from any infectious disease, and in the event of admission, inspection, or examination being refused, the sheriff, or magistrate, or justice may, on reasonable cause shown, grant warrant authorizing such entry, inspection, and examination, and on such warrant being obtained and exhibited, any person refusing to admit the medical officer to such house or premises, or obstructing him in making the inspection or examination aforesaid, shall be liable to a penalty not exceeding forty shillings for every such offence.

Provision of means for disinfecting bedding, etc. 46. (1.) Every local authority may, and when required by the Board shall, provide, either within or without their district, proper premises with all necessary apparatus and attendance for the destruction and for the disinfection, and carriages or vessels for the removal, of articles (whether bedding, clothing, or other) which have become infected by any infectious disease, and shall cause any such articles brought for destruction or disinfection to be destroyed, or to be disinfected and returned, and may remove, and may destroy, or disinfect and return, such articles free of charge.

(2.) Any local authorities may execute their duty under this section by combining for the purposes thereof, or by contracting for the use by one of the contracting authorities of any premises, or of any apparatus or appliances, provided for the purpose of this section by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

Cleansing and disinfecting of premises, etc. 47. (1.) Where it appears to the local authority, upon the certificate of the medical officer or any other legally qualified medical practitioner, that the cleansing and disinfecting of any house, or part thereof, and of any articles therein likely to retain infection, or the destruction of such articles, would tend to prevent or check any infectious disease, the local authority may serve notice

(*t*) This sub-section deals with condemnation by sheriff or justice.

(*u*) See *ante*, p. 307.

on the occupier, or where the house or part thereof is unoccupied on the owner, of such house or part thereof that the same and any such articles therein will be cleansed and disinfected, or (as regards the articles) destroyed, by the local authority, unless the person so notified informs the local authority, within a time to be specified in the notice from the receipt of the said notice, that he will cleanse and disinfect the house or part thereof and any such articles, or destroy such articles, to the satisfaction of the medical officer or of any other legally qualified medical practitioner, as testified by certificate by him, within a time fixed in the notice.

(2.) If either—

- (a.) within the time specified as aforesaid from the receipt of the notice the person on whom the notice is served does not inform the local authority as aforesaid; or
- (b.) having so informed the local authority, he fails to have the house or part thereof and any such articles disinfected, or such articles destroyed, as aforesaid within the time fixed in the notice; or
- (c.) the occupier or owner, as the case may be, without such notice gives his consent;

the house, or part thereof, and articles, shall be cleansed and disinfected, or such articles destroyed by the officers of, and at the cost of, the local authority.

(3.) For the purpose of carrying into effect this section the local authority may enter by day (x) on any premises.

(4.) If the local authority deem it necessary to remove from any house or part thereof, or from any tenement of houses, all or any of the residents not being themselves sick, on account of the existence or recent existence therein of infectious disease, or for the purpose of disinfecting such house or part thereof, or such tenement or part thereof [without the consent of such resident or his parent or guardian], a sheriff, magistrate, or justice, may grant a warrant authorizing the local authority to remove such residents, . . . The local authority shall, and they are hereby empowered, to provide temporary shelter or house accommodation, and, if necessary, maintenance with any necessary attendants, free of charge, for such persons while prevented from returning to such house or part thereof or such tenement or part thereof.

(5.) When the local authority have disinfected any house, part of a house, or any article, under the provisions of this section, they shall compensate the occupier or owner of such house, or part of a house, or the owner of such article, for any unnecessary damage thereby caused to such house, part of a house, or article; and when the authority destroy any article under this section they shall reasonably compensate the owner thereof; and the amount of any such compensation shall be recoverable in a summary manner.

For the purpose of this section the word "house" includes any tent or van or any ship lying in any sea, river, harbour, or other water or ex adverso of any place within the limits of the local authority.

48. (1.) Any local authority may serve a notice on the owner of any Disinfection of bedding, clothing, or other articles which have been exposed to the infection of bedding, etc. any infectious disease, requiring the delivery thereof to an officer of the local authority for removal for the purpose of destruction or disinfection; and if any person fails to comply with such notice he shall be liable to a penalty not exceeding ten pounds.

(2.) The bedding, clothing, and articles if so disinfected by the local authority, shall be brought back and delivered to the owner free of charge, and

Sect. 48. if any of them suffer any unnecessary damage, the authority shall compensate the owner for the same, and the authority shall also reasonably compensate the owner for any articles destroyed; and the amount of compensation shall be recoverable in a summary manner.

49. [Persons engaged in washing or mangling clothes to furnish list of owners of clothes when certified as desirable by the medical officer.]

Infectious matter thrown into ash-pits, etc., to be disinfected.

50. (1.) If a person knowingly casts, or causes or permits to be cast, into any ash-pit, or otherwise exposes any matter or article infected by infectious disease, he shall be liable to a penalty not exceeding five pounds, and, if the offence continues, to a further penalty not exceeding forty shillings for every day during which the offence so continues after the notice hereafter in this section mentioned.

(2.) The local authority shall cause their officers to serve notice of the provisions of this section on the occupier of any house, or part of a house, in which they are aware that there is a person suffering from an infectious disease.

Penalty on ceasing to occupy house without disinfection or notice to owner, or on making false answer.

53. (1.) Where a person ceases to occupy any house, or part of a house, in which any person has within six weeks previously been suffering from any infectious disease, and either—

(a.) fails to have such house, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of the medical officer, as testified by a certificate signed by him, or such articles destroyed; or

(b.) fails to give to the owner or occupier of such house, or part of a house, notice of the previous existence of such disease; or

(c.) on being questioned by the owner or occupier of, or by any person negotiating for the hire of, such house or part of a house, as to the fact of there having within six weeks previously been therein any person suffering from any infectious disease, knowingly makes a false answer to such question,

he shall be liable to a penalty not exceeding twenty pounds.

(2.) The local authority shall cause their officers to serve notice of the provisions of this section on the occupier of any house, or part of a house, in which they are aware that there is a person suffering from an infectious disease.

54. [Removal to hospital of infected persons without proper lodging by order of sheriff or justice.] (y)

55. [Detention of infected persons without proper lodging in hospital by order of sheriff or justice.]

Prohibition on conveyance, etc., of infected person in public conveyance.

59. It shall not be lawful for any owner or person in charge of a public conveyance or ship knowingly to convey therein, or for any other person knowingly to place therein, (z) a person suffering from any infectious disease, or for a person suffering from any such disease to enter any public conveyance or ship, unless in either such case as aforesaid proper precautions have been taken against spreading such disease or infection, (a) and any person contravening any of the foregoing provisions shall be liable to a penalty not exceeding ten pounds; and if without such precautions any person so suffering is conveyed in any public conveyance or ship, the owner or person in charge thereof, as soon as it comes to his knowledge, shall give notice to the local authority, and shall cause such conveyance or ship to be disinfected, and if he fails so to do he shall

(y) Where no such order was obtained the local authority were held liable: *Mitchell v. Aberdeen*, 20 R. 253; *Sutherland v. Aberdeen*, 22 R. 95. See also

8 Ed. VII. c. 67, s. 1, *ante*, p. 467.

(z) *Malloch v. Hunter*, 21 R. 22.

(a) 7 Ed. VII. c. 30, s. 1 (3).

he liable to a fine not exceeding five pounds, and such owner or person in charge shall be entitled to recover in a summary manner from the person so conveyed by him, or from the person causing that person to be so conveyed, a sum sufficient to cover any loss and expense incurred by him in connexion with such disinfection. It shall be the duty of the local authority, when so requested by such owner or person in charge, to provide for the disinfection of the same, and they may do so free of charge. But nothing contained in this section shall prevent the removal by railway train or by ship of persons suffering from infectious disease, if they are conveyed within an ambulance-waggon, or other proper vehicle provided or approved by the local authority.

60. (1.) If the medical officer of any district has evidence that any person in the district is suffering from an infectious disease attributable to milk supplied within the district from any dairy situate within the district, or that the milk from any such dairy is likely to cause any such disease to any person residing in the district, such medical officer shall visit such dairy, and the medical officer shall examine the dairy and every person engaged in the service thereof or resident upon the premises or who may be resident in any premises where any person employed in such dairy may reside, and if accompanied by a veterinary surgeon approved as aforesaid, shall examine the animals therein, and the medical officer shall forthwith report the results of his examination accompanied by the report of the veterinary surgeon, if any, to the local authority or any committee of the local authority appointed to deal with such matters. (b)

Inspection of dairies, and power to prohibit supply of milk.

(2.) If the medical officer of any district has evidence that any person in the district is suffering from any infectious disease attributable to milk from any dairy without the district, or that the milk from any such dairy is likely to cause any such disease to any person residing in the district, such medical officer shall forthwith intimate the same to the local authority of the district in which such dairy is situate, and such other local authority shall be bound, forthwith, by its medical officer to examine the dairy and the persons aforesaid, and by a veterinary surgeon approved as aforesaid, to examine the animals therein, previous notice of the time of such examination having been given to the local authority of the first-mentioned district, in order that the medical officer or any veterinary surgeon approved as aforesaid may, if they so desire, be present at the examinations referred to, and the medical officer of the second-mentioned local authority shall forthwith report the results of his examination, accompanied by the report of the veterinary surgeon, if any, to that local authority or any committee of that local authority appointed under section fourteen of this Act to deal with such matters. . . .

(3.) The local authority may, if the dairy is within the district, require the dairyman not to supply milk either within or without the district, and shall give notice of the fact to the local authority of any district within which they believe milk to be supplied from such dairy.

(6.) Any such order shall be forthwith withdrawn on the local authority, or their medical officer on their behalf, being satisfied that the milk from the dairy is no longer likely to cause infectious disease. (c)

(7.) [Appeal in a summary manner to a sheriff.] Pending the disposal of any such appeal the order shall remain in force. . . .

(10.) Nothing in or done under this section shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886, (d) or of

(b) See s. 14.

bour, 8 F. 448.

(c) Compensation under s. 164, *post*, is exigible from the local authority of the district in which the dairy is situate: *Bar-*

(d) See now also 57 & 58 Vict. c. 57, *ante*, p. 375.

Sect. 60. any order, licence, or act of the Privy Council or the Board thereunder, or of any regulation, licence, or act of a local authority, made, granted, or done under any such order of the Privy Council or the Board, or exempt any dairy, building, or thing, or any person from the provisions of any general Act relating to dairies, milk, or animals.

61. [Dairymen to supply information and to produce list of customers and invoices when outbreak certified to be attributable to milk.]

Provision of conveyance for infected persons.

67. A local authority may provide and maintain, or may combine with one or more local authorities in providing and maintaining, carriages suitable for the conveyance of persons suffering from any infectious disease, and pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

Mortuaries

69. [Power of sheriff, etc., in certain cases to order removal of dead body to mortuary.]

(2.) Unless the friends or relations of the deceased undertake to bury and do bury, the body within the time limited, it shall be the duty of the local authority to bury such body, and any expense so incurred may be recovered by them in a summary manner from any person legally liable to pay the expenses of such burial.

Tents and Vans

Tents and vans used for human habitation.

73. (1.) A tent, van, shed, or similar structure, used for human habitation, which is in such a state as to be a nuisance or injurious or dangerous to health, or is so overcrowded as to be injurious or dangerous to the health of the inmates, shall be a nuisance liable to be dealt with summarily under this Act.

(2.) A local authority may make byelaws for promoting cleanliness in, and the habitable condition of, tents, vans, sheds, and similar structures, used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connexion with the same.

(3.) Where the medical officer or sanitary inspector has reasonable cause to believe either—

(a.) that any tent, van, shed, or similar structure, used for human habitation, is in such a state or so overcrowded as aforesaid, or that there is any contravention therein of any byelaw made under this section; or

(b.) that there is in any such tent, van, shed, or structure, any person suffering from an infectious disease, or that any infectious disease has recently existed therein,

he may enter at reasonable times in the daytime, such tent, van, shed, or structure, and examine the same and every part thereof, and the medical officer may examine any person found therein, in order to ascertain whether such tent, van, shed, or structure, is in such a state or so overcrowded as aforesaid, or whether there is therein any such contravention, or a person suffering from an infectious disease, and the provisions of this Act with respect to the entry into any premises by an officer of the local authority shall be in force for the purposes of this section.

(4.) Nothing in this section shall apply to any tent, van, shed, or structure, erected or used by any portion of Her Majesty's naval or military forces.

Underground Dwellings

Sect. 74.

74. [Rules as to underground dwellings.]

76. [Cases in which two convictions have occurred within three months, closing order may be made by sheriff.]

Vaccination

77. The local authority may defray the cost of vaccinating or re-vaccinating such persons as to them may seem expedient. Cost of vaccination.

PART IV

PREVENTION OF EPIDEMIC DISEASES

78. [General power of Board to make regulations.]

81. The local authority of any district within which or part of which regulations so issued by the Board are declared to be in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things as may be necessary for mitigating any such disease, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Local authority to see to execution of regulations.

82. The local authority and their officers shall have power of entry on any premises for the purpose of executing or superintending the execution of any regulations so issued by the Board as aforesaid. Power of entry.

83. The Board may, if they think fit, by order authorize or require any two or more local authorities to act together for the purposes of this Part of this Act, and may prescribe the mode of such joint action, and of defraying the costs thereof. Board may combine local authorities.

84. When any such regulation so issued by the Board is in force in any place, on the certificate of a medical officer, or of two duly qualified medical practitioners, or on the report of a sanitary inspector, or other sufficient evidence, that any house, or part of a house is so overcrowded as to be dangerous to health, the local authority shall have power to regulate the same according to the provisions of this Act in reference to common lodging-houses. When regulation in force, overcrowded houses to come under common lodging-houses' provisions.

85. [Enforcement of regulations by Government officers, etc.]

88. The powers exercisable by Her Majesty in Council or any two of the Lords of Her Majesty's Privy Council under section two hundred and thirty-four of the Customs Consolidation Act, 1876, (e) shall be exercisable by the Board, provided that any Orders of the Board shall apply to ships coming to any port in Scotland; and the penalties under that section may be sued for, prosecuted, and recovered with expenses at the instance of the Lord Advocate on behalf of the Board, or of any local authority with consent of the Board, by proceedings in any competent Court. Transfer of power under 39 & 40 Vict. c. 36, s. 234.

PART V

Regulation of Common Lodging-Houses

90. It shall not be lawful to keep or use as a common lodging-house any house, or to receive or retain any lodgers therein, unless such house shall have been inspected for that purpose by the inspector of common lodging-houses for No lodger to be received in common lodging-house till

(e) See *ante*, p. 129.

Sect. 90.

it has been inspected and registered.

the district, and approved by the local authority, and shall have been and be registered as by this Act provided: (f) and if any person shall contravene this enactment he shall be guilty of an offence under this Act, and if, in the opinion of the local authority, any common lodging-house on the register, or the keeper thereof, shall cease to be suitable for the purpose, the local authority may present a petition to the sheriff for authority to remove such house from the register either permanently or until there is a change of circumstances, and the sheriff, if he thinks fit, may grant warrant accordingly.

Copy of bye-laws, to be furnished gratis to keeper..

93. A copy of all byelaws [as to common lodging-houses] made by the local authority in pursuance of this Act, when confirmed as herein-after provided and printed, shall be furnished gratis to every keeper of a common lodging-house, and such keeper shall be bound to keep a copy thereof hung up in some conspicuous place in each room in which lodgers are received.

94. [Power to local authority to require additional supply of water.]

95. [Power to local authority to order reports from keepers.]

Local authority may remove sick persons to hospitals, etc.

96. When a person in a common lodging-house is ill of any infectious disease, the local authority may, without further warrant than this Act, cause such person to be removed to a hospital or infirmary, with the consent of the authorities thereof, where different from the local authority, and on the certificate of the medical officer, or of any legally qualified medical practitioner, that the disease is infectious and that the patient may be safely removed, but if removal be considered dangerous to life by such officer or medical practitioner and is so certified, no lodger shall be admitted to such lodging-house until it is certified free from infection: and the local authority may, so far as they think requisite for preventing the spread of disease, cause any clothes or bedding used by such person to be disinfected or destroyed, and may pay to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof.

As to giving notice of fever, etc., occurring.

97. The keeper of a common lodging-house shall, when a person in such house is ill of any infectious disease, give immediate notice thereof either to the medical officer or to the inspector of common lodging-houses, who shall forthwith inform the medical officer, and if he is satisfied that the person is suffering from an infectious disease, he shall cause the patient to be removed without delay, and shall cause the premises to be disinfected.

Provided always, that if the medical officer considers the patient not fit to be removed with safety, until it is certified by him that the premises are free from infection the house shall not be used as a common lodging-house, except such part thereof as may be certified by the medical officer to be free from infection, and the local authority may make provision for the temporary shelter or house accommodation, and, if necessary, maintenance at a rate not exceeding the same payment per night as usually paid by persons frequenting said lodging-house while such persons are prevented from returning to such common lodging-house.

Inspection.

98. The keeper of a common lodging-house shall, at all times when required by any officer of the local authority, give him free access to such house and every part thereof. (g)

Cleansing.

99. The keeper of a common lodging-house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, waterclosets, earth-closets, privies, ashpits, cesspools, and drains thereof, to the satisfaction of the inspector, and so often as shall be required by or in accordance with any regulation or byelaw of the local authority, and shall well and sufficiently, and to the like satisfaction, lime-wash the walls and ceilings thereof in the first week

(f) Registration required by s. 89.

(g) See *Gunn v. Cadenhead*, 15 R. 57.

of each of the months of April and October in every year, and at such other times as the local authority may by special order appoint or direct. Sect. 99.

PART VI

SEWERS, DRAINS, AND WATER SUPPLY

Sewers and Drains

103. The local authority ^(h) shall have power to construct within their district, and also when necessary for the purpose of outfall or distribution or disposal or treatment of sewage, without their district, such sewers as they may think necessary for keeping their district properly cleansed and drained, and may carry such sewers through, across, or under any public or other road, or any street or place, or under any cellar or vault which may be under the foot pavement or carriageway of any street or road, and after reasonable notice in writing (if upon the report of a surveyor ⁽ⁱ⁾ it should appear to be necessary), into, through, or under any lands whatsoever, ^(k) and from time to time to enlarge, lessen, alter, arch over or otherwise improve, or to close up or destroy, all sewers vested in them, provided no nuisance is created by such operations; and if any person is thereby deprived of the lawful use of any sewer, the local authority shall provide another sufficiently effectual for his use. The local authority shall cause their sewers to be so constructed, maintained, kept, and cleansed as not to be a nuisance, and for the purpose of cleansing and emptying them may construct and place, either above or under ground, such reservoirs, sluices, engines, or other works as may be necessary, and may, subject to the provisions of the Rivers Pollution Prevention Acts, cause such sewers to communicate with and be emptied into such places as may be fit and necessary either within their district, or, if necessary for the purpose of outfall or distribution or disposal or treatment of sewage, without their district, and to cause the sewage and refuse therefrom to be collected for sale or for any purpose whatsoever, but so as not to create a nuisance.

104. [Notice to be given before commencing sewage works without district.]

105. [In case of objection, work not to be commenced without sanction of Board.]

107. Where any sewer shall pass under or across, or in any way affect any railway or canal, or any bridge, tunnel, or other work in connection therewith, the following provisions for the protection of such railway or canal, or bridge, tunnel, or other work, shall apply and have effect:—

- (1.) The whole works connected with such sewer, so far as affecting any railway or canal, or bridge, tunnel, or other work, shall be executed and thereafter maintained under the superintendence and to the reasonable satisfaction of the engineer of the railway or canal company, and according to plans and specifications to be previously submitted to such engineer and approved by him in writing. Provided that if such engineer shall not have expressed his approval or disapproval of such plans and specifications within fourteen days after the same shall have been submitted to him, he shall be deemed to have approved thereof;

(h) See 1 Ed. VII. c. 24, s. 5.

(i) A proper surveyor's report is not necessary: *Brown v. Kirkcudbright*, 8 F. 77. The local authority can exercise these powers without regard to those conferred by the Burgh Police Acts, *ib.*: *Mont-*

gomerie, 1903, A.C. 170.

(k) As to compensation see *Leith v. Field*, 6 R. 185. They need not acquire the lands: *Caledonian Railway v. Perth*, 38 S. L. R. 748.

Power to make sewers.

Sewers to be cleansed.

Protection for railways, canals, etc.

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(2.) Such works, and any alteration which it may at any time be necessary to make in such works, may be executed either by the local authority or by the railway or canal company at the option of the engineer of the railway or canal company;

(3.) In the event of the local authority and the engineer of the railway or canal company differing in opinion in regard to any works affecting the railway, or canal, or bridge, tunnel, or other work, or as to the mode of carrying out such works, or otherwise in relation thereto, such difference shall, on the application of the local authority, or of the railway or canal company, be referred to an engineer to be appointed by the sheriff, and shall be decided by the sheriff upon the report of such engineer, and such decision shall be final.

109. [Power of entry under warrant of sheriff for purpose of making plans, etc.]

Power to drain
into sewers of
local authority.

110. Any owner or occupier of premises within the district of a local authority liable for the public health general assessment or special sewer assessment shall be entitled to cause his drains to empty into the sewers of such local authority on condition of his giving twenty days previous notice of his intention so to do to the local authority, and of complying with their regulations in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the local authority to superintend the making of such communications. Provided always that the sewage so emptied or discharged into the sewers is not of a nature to cause damage to the structure of the sewer or, by admixture with other sewage therein, to cause a nuisance.

Use of sewers
by persons
beyond district.

111. Any owner or occupier of premises beyond the limits of the district of a local authority or within said limits who is not liable for public health general assessment or special sewer assessment may cause any sewer or drain from such premises to communicate with any sewer of the local authority; provided always, that such sewer of the local authority and any works connected therewith are of sufficient capacity and otherwise suitable for receiving such additional drainage; and that upon such terms and conditions as may be agreed upon between such owner or occupier and such local authority, and any dispute which may arise under this section shall be determined summarily by the sheriff. Provided always that the additional sewage so to be emptied or discharged into the sewers is not of a nature to cause damage to the structure of the sewer or, by admixture with other sewage therein, to cause a nuisance.

Penalty for
making un-
authorized
drains.

112. Every person, not being authorized by the local authority, who shall make any drain into any sewer vested in the local authority shall be liable in a penalty not exceeding five pounds, and the local authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them.

114. [Not to build over sewers, etc.]

115. [Sewers to be trapped.]

116. [Distilleries, etc., to deposit refuse.]

Drain dis-
charging below
low-water
mark.

119. If the local authority shall consider it necessary for public health that any drain should discharge itself below low-water mark, they shall be entitled, with the consent of the Board of Trade and of the Commissioners of Woods and Forests (without prejudice to any question as to the right to the foreshores) to construct the requisite works for that purpose.

As to drainage
of houses.

120. If a house, distillery, manufactory, or other work, within the district of a local authority, is without a drain, or without such drain as is sufficient for

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effectual drainage, the local authority may, by notice, require the owner of such house, distillery, manufactory, or work, within a reasonable time therein specified, to make a sufficient drain emptying into any sewer which the local authority are entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred yards from the site of the said premises of such owner; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place, not being under any house, as the local authority may direct; and if the person on whom such notice is served fails to comply with the same, the local authority may, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by them in so doing may be recovered from such owner in a summary manner.

Provided that where in the opinion of the local authority greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such sewer and require the owners of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or in case of dispute the matter shall be determined summarily by the sheriff.

Water Supply

124. With respect to burghs subject to the provisions of the Burgh Police (Scotland) Act, 1892, (l) or having a local Act for police or other purposes nothing contained in this Act shall prejudice the provisions of any of the said Acts in regard to the provision of a supply of water for the domestic use of the inhabitants and for sanitary and other purposes. Provided that in the Burgh Police (Scotland) Act, 1892, and in the Lands Clauses Acts, so far as incorporated therewith, or authorized thereby to be put in force the term "land" shall include water and any right or servitude to or over land or water.

Supply of water for burghs.
55 & 56 Vict.
c. 55.

125. If any occupied house within the district of any local authority other than the local authority of a burgh is without a proper supply of wholesome water at or reasonably near the same, the local authority shall require the owner to obtain such supply and to do all such works as may be necessary for that purpose, and failing his doing so, within twelve months after due notice, the local authority may themselves obtain such supply and for that purpose may use their powers of acquiring land by agreement or otherwise under this Act; (m) and may, for the purpose of obtaining such supply, enter upon the premises and execute all such works as may be necessary; and the local authority may recover in a summary manner from the owner the whole or a reasonable part of the expenses incurred by them under this section: Provided that where the owners of two or more houses have failed to comply with the requirements of the notice served on them under this section, and the local authority might under this Act execute the necessary works for providing a water supply for each house, the local authority may, if it appears to them desirable and no greater expense would be occasioned thereby, execute works for the joint supply of water to those houses, and apportion the expenses as shall be just, and further provided that if any question shall arise under this section it shall be determined summarily by the sheriff who shall have regard to all the circumstances

Local authority to require water to be supplied to houses in certain cases.

(l) *Post*, p. 485.(m) *Ss.* 144, 145.

Sect. 125. of the ease, and whose decision shall be final. Provided that nothing in this section shall relieve the local authority from the duty of providing their district or any part thereof with a supply of water, where a general scheme for such supply is required, and can be carried out at a reasonable cost.

126. (1.) [Supply of water for districts other than burghs by local authority by agreement.] Provided that it shall not be lawful for the local authority to provide or supply water within any area which any local authority or any company, established by Act of Parliament or empowered by or authorized by Provisional Order, is authorized to supply with water, unless the local authority shall previously have purchased or acquired the undertaking of such local authority or company.

(2.) [Surplus water may be supplied for other than domestic purposes by agreement.] Provided that when water is thus supplied from such surplus it shall not be lawful for the local authority to charge the persons so supplied both with the portion of the special water assessment applicable to the buildings or premises supplied, and also for the supply of water obtained; but the local authority may either charge the said assessment leviable on such buildings or premises, or charge for the supply of water furnished to the same as they shall think fit, and the local authority shall have the same remedies and powers of recovering payment of such water rents or payments as are herein-after provided with regard to the special water assessment.

(3.) The local authority may cause all existing public cisterns, pumps, wells, (n) reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained and plentifully supplied with water. . . .

(4.) The local authority shall have the same powers and be subject to the same restrictions for carrying water mains within their district as they have and are subject to for carrying sewers within their district by the law for the time being in force.

Incorporation
of Waterworks
Clauses Acts.

132. The following Acts and parts of Acts, so far as the same respectively are applicable for the purposes, and are not inconsistent with the provisions of this Act, are hereby incorporated with this Act:—

10 & 11 Vict.
c. 17.

The Waterworks Clauses Act, 1847, except the provisions with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit, and except the words in section forty-four thereof, "with the consent in writing of the owner or reputed owner of any such house or of the agent of such owner":

26 & 27 Vict.
c. 93.

The Waterworks Clauses Act, 1863 (o):

8 & 9 Vict.
c. 33.

The provisions of the Railways Clauses Consolidation (Scotland) Act, 1845, with respect to the temporary occupation of lands (p) near the railway during the construction thereof, but such last-mentioned provisions shall apply only in the case of any reservoir, filter, or distributing tank, which the local authority may be authorized to construct, and the works immediately connected therewith, and for the purposes of this Act those provisions shall be read as if such reservoir, filter, or tank, and works, were therein mentioned instead of "the railway," and the boundaries of such reservoir, filter, or tank, and works, instead of "the centre of the railway," and the prescribed limits shall be two hundred yards from such boundaries:

Provided always that—

(n) Although the same may be situated on private land: *Smith v. Archibald*, 5 A. C. 489.

(o) *Ante*, p. 279.

(p) By this Act lands may be so occupied compensation being paid.

- (a.) the local authority shall not be obliged to furnish a supply of water to any person for any less sum than five shillings in any one year; Sect. 132.
- (b.) no person shall be entitled to demand such supply of water, or to require the local authority to lay down communication pipes, unless some pipe of the local authority shall have been laid within one hundred feet of the house or other premises in respect of which such supply or communication pipes are demanded, or unless the local authority shall become bound by virtue of a requisition and agreement made and executed in the manner and to the extent required by the Waterworks Clauses Act, 1847, to cause pipes to be laid down within the said distance of one hundred feet of such house or other premises; 10 & 11 Vict. c. 17.
- (c.) The water to be supplied by the local authority need not be constantly laid on under pressure.

PART VII

RATING

Assessments

135, 136, 133. [Assessments recoverable as rates.]

PART IX

Legal Proceedings

159. [Service of notices, petitions, and orders.]

161. [One or more joint owners may be proceeded against alone.]

164. Full compensation shall be made, out of any fund or assessment applicable to the purposes of this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act, except when otherwise specially provided; and in case of dispute, if the sum claimed do not exceed the sum of fifty pounds sterling, the same may be ascertained on a summary application by either party to the sheriff, whose decision shall be final and not subject to review, unless when pronounced by the sheriff substitute, in which case it may be reviewed by the sheriff on appeal; and when the sum claimed exceeds fifty pounds sterling, such compensation shall be ascertained and disposed of by a sole arbiter appointed in manner set forth in sub-section eleven of section one hundred and forty-five of this Act. (q) Compensation to be made.

166. The local authority and the Board shall not be liable in damages for any irregularity committed by their officers in the execution of this Act, or for anything done by themselves in the bonâ fide execution of this Act; . . . Local authority or Board not liable for irregularity of their officers.

PART XI

MISCELLANEOUS

Provisions as to Ships

177. Any ship lying in any river, harbour, or other water shall be subject to the local authority of the district within or ex adverso of which such river, harbour, or other water is situate, and to the sheriff, magistrates, and justices of the peace having jurisdiction in such district, and shall be within the provisions of local authority. Provision as to ships within the jurisdiction of local authority.

(q) *I.e.* by the parties or in default by the Board.

Sect. 177. of this Act in the same manner as if such ship were a house within such district, but this section shall not apply to any ship belonging to Her Majesty or to any foreign government.

Provision as to district of local authority extending to places where ships are lying. 178. For the purposes of this Act, any ship that is in a place within three miles of the coast of Scotland, and not within the district of a local authority, shall be deemed to be within the district of such local authority as may be prescribed by the Board, and until a local authority has been prescribed then of the local authority whose district nearest adjoins the place where such ship is lying.

Charge for medical officer attending sick on board any ship, and to be paid by captain. 179. Whenever, in compliance with any regulation of the Board which they are hereby empowered to make under this Act, any medical officer employed by a local authority performs any medical service on board any ship the local authority shall be entitled to charge for such service, and such charge shall be payable by the captain of such ship on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick, and in the event of dispute the amount shall be determined by the sheriff in a summary manner; and if such services shall be rendered by any medical practitioner who is not a medical officer of the local authority, he shall be entitled to charge for any service rendered on board, with extra remuneration on account of distance, at the same rates as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid; and in case such charges be not paid, the medical officer or practitioner may bring an action against the person in charge of such ship for the same, and the ship, cargo, and tackle thereof, shall be subject to a lien for the amount of such charges.

Byelaws

188. The provisions of this Act relating to byclaws(r) shall not apply to any regulations which a local authority is by this Act authorized to make; nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

PART XII

Saving Clauses

Act not to affect navigation of rivers or canals, or irrigation of lands. 189. Nothing in this Act contained shall prejudice or affect, or shall enable any local authority or other person to injuriously affect—

- (1.) The irrigation of lands in a rural district, or the supply of water used for such irrigation;
- (2.) Any supply of water which has been conducted to and is being used for any house or building used in connection with such house or occupied for agricultural purposes;
- (3.) The supply of water required for the purposes of any waterworks established by or under the provisions of any Act of Parliament, or of the compensation water required to be given by the owners of such waterworks, unless the local authority shall have previously obtained the consent of such owners;
- (4.) The navigation on or use of any river, canal, dock, harbour, lock, reservoir, or basin, in respect of which any persons are by virtue of

(r) Ss. 183-187 as to making, confirmation, etc.

any Act of Parliament entitled to take tolls or dues, or the supply of water to the same, or any bridges crossing the same, or any towing-path thereon; Sect. 189.

- (5.) The purification of any river or stream in respect of which any persons are by virtue of any Act of Parliament authorized to exercise jurisdiction, or the rights, powers, jurisdictions, and authorities conferred by such Act.

Provided always, that it shall not be lawful for the local authority to execute any works in, through, or under any wharves, quays, docks, harbours, locks, reservoirs, or basins without the consent in writing in every case of the persons entitled by virtue of any Act of Parliament to take tolls or dues in respect thereof, and such persons may at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the inspector to the local authority, take up, divert, or alter the level of any sewers and drains, culverts or pipes, constructed by any local authority, and passing under or interfering with such rivers, canals, docks, harbours, reservoirs, or basins, or the towing-paths thereof, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

190. Except in so far as expressly provided, nothing in this Act shall pre-^{Saving of}judice or affect the provisions of the Local Government (Scotland) Acts, or of the Burgh Police (Scotland) Act, 1892, as amended, or of the Public Health (Scotland) Amendment Act, 1891,^{certain Acts.}(s) or of the Anatomy Acts, 1832 and 1871.^(t)

192. (1.) Nothing in this Act shall supersede, prejudice, or affect the pro-^{Saving of}visions of any local Act applicable to any burgh or the forms of prosecutions^{local Acts.} and procedure in use therein, but the provisions of this Act shall operate to confer additional powers on the local authorities of such burghs, and the before-mentioned forms and procedure may be used therein in all prosecutions under this Act.^(u)

(2.) Nothing contained in this Act shall prejudice or affect the provisions of any local Act under which any authority is constituted for supplying water within any district or limits created by such Act.

For the purposes of this and the immediately succeeding section the expression "local Act" includes a Provisional Order and the Act confirming such Order.

193. Where, in any public general, or local Act the Public Health Acts or any sections thereof are referred to, such reference shall be deemed to mean and include a reference to this Act or the corresponding sections of this Act and any amendments thereof; . . . Reference to Public Health Acts.

194. Without prejudice to any existing right of the Crown, there shall be exempted from so much of the provisions of this Act as relates to buildings^{Exemption of Government property from building regulations.} and structures, every building, structure, or work vested in, or in the occupation of, Her Majesty, her heirs and successors, either beneficially or as part of the hereditary revenues of the Crown, or in trust for the public service or for public services; also any building, structure, or work vested in, or in the occupation of, any department of Her Majesty's Government for public purposes or for the public service.

(s) As to assessments for water supply.

(t) See *ante*, p. 424.

(u) See also s. 171 by which the powers of the Act are made cumulative.

Sect. 4. By 55 & 56 Vict. c. 55 (The Burgh Police (Scotland) Act, 1892)—(w)

PART I

GENERAL

Definitions

Definitions. (x) 4. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

- (1.) "Board of Supervision" shall mean the Board of Supervision for the relief of the poor and of public health:
- (2.) "Broker" shall include any person dealing in second-hand goods or articles, or in yarn or waste, or in other unwrought material, or in old metals, bones, or rags: Provided always, that wholesale dealers in rags, ropes, and waste, purchasing only from licensed brokers or licensed marine store dealers, or in quantities of not less than half a ton, shall not be included in this definition:
- (4.) "Burgh," when used alone, unless otherwise expressed or inconsistent with the context, shall include royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, burgh of regality, burgh of barony, and any populous place or police burgh administered in whole or in part under any general or local Police Act or any burgh created under this Act:
- (5.) "Carriage" shall include any coach, omnibus, tramway car, cab, chariot, fly, hansom, car, cabriolet, gig, brougham, waggon, timber-carriage, dray, truck, cart, hand-cart, wheelbarrow, hand-barrow, lorry, bicycle, tricycle, velocipede, or other vehicle used for the conveyance of persons, animals, or goods, and whether plying for hire or not:
- (6.) "Cattle" shall include any horse, mare, gelding, foal, colt, filly, bull, cow, heifer, ox, calf, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine:
- (9.) "The Commissioners" shall mean the Commissioners for the purposes of this Act, in their collective capacity, not being Commissioners appointed by the Secretary for Scotland for holding local inquiries under this Act:
- (13.) "House," where not otherwise expressed, shall mean dwelling-house, and shall include out-houses and other erections, being pertinents of the house:
- (14.) "Householder" shall mean any occupier or inhabitant occupier of lands or premises whose occupancy would qualify him to vote for a member of Parliament for a burgh; and shall include any female occupier of lands or premises who would be entitled to vote at municipal elections:
- (15.) "Infectious disease" shall mean and include cholera, small-pox, typhus, typhoid, scarlet, relapsing, continued, and puerperal fever, measles, scarlatina, and diphtheria, and such other disease as the Commissioners, with the approval of the Board of Supervision, or Her Majesty by Order in Council, may from time to time order, for the purposes of this Act, to be deemed infectious:

(w) A great part of this and the succeeding Act seems a more fitting subject of bye-laws than of an Act of Parliament.

(x) See also 3 Ed. VII. c. 33, s. 103, *post*, p. 535.

- (16.) "Lands and premises" shall include all lands, springs, rights of servitude, dwelling-houses, shops, warehouses, vaults, cellars, stables, breweries, manufactories, mills, and the fixed or attached machinery therein, yards, places, and other heritages specified or included in the Acts for the valuation of lands and heritages in Scotland in force for the time being:
- (17.) "Local Police Act" shall mean any Act other than the General Police Acts providing for the watching, lighting, paving, draining, cleansing, or improving of a burgh, or incorporating any portion of the General Police Acts, but shall not include any Act dealing exclusively with harbours, markets, or slaughter-houses, water supply, gas supply, sewerage, tramways, or financial arrangements, or such part of any Act dealing mainly with the subjects as relates exclusively to them:
- (21.) "Occupier" shall mean tenant or sub-tenant, or any person in the actual occupancy; and shall not include a lodger, or a person in the occupation as tenant of a furnished house let for a less period than one year; but shall include the person by whom such furnished house is so let:
- (22.) "Owner" shall include joint owner, fiar, life-renter, feuar, or other person in the actual possession of or entitled to receive the rents of lands, and premises of every tenure or description, and the factor, agent, or commissioner of such persons, or any of them, or any other person, who shall intromit with or draw the rent:
- (23.) "Parliamentary burgh" shall mean a burgh having the right of sending or contributing to send a member to Parliament:
- (24.) "Police Act, 1857," shall mean the Act passed in the twentieth and twenty-first years of the reign of Her present Majesty, chapter seventy-two: (y)
- (25.) "Police burgh" shall mean a populous place the boundaries whereof have been fixed under the General Police Acts (z) or under any Local Police Act or under this Act:
- (26.) "Populous place" shall mean any town, village, place, or locality, containing a population of seven hundred inhabitants or upwards, not being administered under any general or local Police Act; and for the purposes of this Act, two or more contiguous towns, villages, places, or localities, not being burghs, may be held to be a populous place:
- (27.) "Private court" shall mean a court maintained or liable to be maintained by persons other than the Commissioners:
- (28.) "Private street" shall mean any street maintained or liable to be maintained by persons other than the Commissioners:
- (29.) "Public Health Acts" shall mean the Public Health (Scotland) Act, 1867, and any Act amending the same:
- (30.) "Sheriff" shall include sheriff-substitute, . . .
- (31.) "Street" shall include any road, highway, bridge, quay, lane, square, court, alley, close, wynd, vennel, thoroughfare, and public passage or other place within the burgh used either by carts or foot passengers, and not being or forming part of any harbour, railway, or canal station, depôt, wharf, towing-path, or bank. (a)

(y) *Post*, p. 540.

(z) Repealed by s. 6.

(a) See *Lang v. Kerr*, 3 A. C. 529. Thedefinition does not include a foreshore: *Heatherton v. Watson*, 7 R. 5, nor a common passage: *Wallace*, 8 F. 62.

Sect. 5.

Application of the Act

Places to
which Act
shall apply.

5. (1.) This Act shall apply—

- (a.) From its commencement to every existing burgh, with the exception of the burghs named in Schedule II. of this Act, (b) and
(b.) To every burgh created under this Act from the date when its creation is recorded in the sheriff court books. (c)

(2.) In the burghs to which this Act applies, this Act shall, except as herein-after provided, supersede and come in the place of the general or local Police Acts, and all local Police Acts applicable to such burghs are hereby repealed, except such portions of the Acts mentioned in the first column of Schedule III. of this Act as are specified in the third column thereof: (d) Provided that where any of the provisions of a general Police Act are incorporated in the portions so excepted, such unrepealed portions shall be read as if in lieu of the reference to such provisions of a general Police Act there were substituted a reference to the corresponding provisions of this Act; . . .

PART III

POLICE FORCE

Duties of chief
constable and
constables.

86. (e) It shall be the duty of the chief constable, and of the constables to be appointed by him, to guard, patrol, and watch within the burgh, according to the regulations to be prescribed by the chief constable, under the control of the Commissioners; and it shall be lawful for the said chief constable, or any constable of police, without any other warrant than this Act, to apprehend and to bring before the magistrates of police all persons actually committing any criminal, riotous, or disorderly act, or accused or suspected of having committed crimes, delinquencies, or offences, of whatsoever description, (f) and at what place and period soever the same may have been or are suspected to have been committed, whether the same be of such a kind as can be competently tried before the magistrates of police, or be of a nature requiring to be remitted for trial before another tribunal, or which, from having been committed beyond the bounds of the burgh, fall to be tried in another jurisdiction; (g) . . .

87. [Penalty on persons obstructing constables in their duty.]

88. [Constables not to resign without leave or notice.]

91. [Constables dismissed to deliver up accoutrements.]

92. [Penalty for unlawful possession of accoutrements, or for assuming the dress of constables.]

93. [Penalty for neglect of duty.]

(b) Aberdeen, Dundee, Edinboro', Glasgow and Greenock. By s. 15 the Act may be adopted either in whole or in part by resolution of the local authority in these burghs.

(c) See also 57 & 58 Vict. c 58, s. 44.

(d) As to local Acts, see *ante*, p. 252.

(e) The following sections, viz. 86 to 88, 91 to 93, 100, 297, 380, 381, 383, 386 to 391, 393, 394, 401, 407 to 412, 430, 436 to 439 and 476, relate to inherent powers, but being contained in this Act are here inserted. See notes, *post*, pp. 540, 541.

By the law of Scotland it seems that the commissioners under these Acts are liable to be sued for the wrongous acts of their officers although not done by their orders: *Mitchell v. Stuart*, 13 F. C. 355; *Lawson v. Stewart*, 14 *ib.* 507. But see now *Girdwood v. Midlothian*, 22 R. 11; *Young v. Glasgow*, 18 R. 825.

(f) See *Carlin v. Malloch*, *ante*, p. 40.

(g) By s. 32 additional constables may be employed in burghs temporarily and by s. 33 there is power to detach constables to other places.

PART IV

Sect. 99.

POLICE ADMINISTRATION

Lighting

99. The Commissioners shall make provision for lighting in a suitable manner all the streets, and all other places within the burgh which in their judgment should be lighted at the public expense, and shall provide, erect, and maintain such a number of lamps, lamp posts, and lamp irons, and other appurtenances, as may be necessary for that purpose, and shall light, or shall enter into contracts for lighting, and cause to be lighted, such lamps by means of gas, or such other light of an improved kind, subject to the provisions of the Electric Lighting Act, 1882, or any Act or Acts amending or superseding the same, as they may find expedient; and the Commissioners are hereby authorized to order the lamp irons, lamp posts, and lamps to be fixed, either upon the sides of the causeways, streets, and roads, or upon the kerbstones of the pavements or footways, or at or upon the rails or in or upon the walls or buildings on the sides of the streets, as they shall think proper, without being liable to any claim for compensation thereanent. The Gasworks Clauses Act, 1847, (h) the Gas and Water Works Facilities Act, 1870, the Gasworks Clauses Act, 1871, (i) and the Gas and Water Works Facilities Act (1870) Amendment Act, 1873, and any Act amending the said Acts, shall, except in or so far as they are expressly varied by this Act, be incorporated with this Act; and the expression "the undertakers" in the said Acts shall mean the Commissioners.

100. It shall be lawful for anyone who shall see any person take away, or wilfully break, throw down, or damage any lamp or lamp post, or wilfully extinguish the light, or damage the iron or appurtenances of any lamp, to seize and apprehend him, and for any person to assist in seizing the offender, and by the authority of this Act, without any other warrant, to convey such offender to the police office, or to deliver him into the custody of a police officer, watchman, or constable or other officer, in order to be secured and taken before a magistrate; . . .

104. [Lighting of common stairs, etc., by owners on request of Commissioners.]

105. The Commissioners may at any time, and from time to time as they think fit, provide, fit up, and maintain and renew, in common stairs, passages, or private courts, all necessary lamps, brackets, and other means of lighting, and all necessary means of extinguishing the light, and provide the necessary supply of gas or other light therefor, and by their inspector of lighting, or any other officer or servant of the Commissioners, clean any lamps and brackets, and light and extinguish the same, and for all purposes aforesaid the inspector of lighting, or any other officer or servant of the Commissioners, shall be entitled to require and shall have access to and from all such common stairs, passages, or private courts at all times, and the Commissioners may, in such cases as they think fit, recover the expense they may incur as a debt from the owner, or if

(h) 10 & 11 Vict. c. 15. By s. 7 they are not to enter on private lands to lay pipes without consent. By s. 15 the proper officer may enter buildings to ascertain quantities of gas consumed, and by s. 16 the amount due may be recovered. See also 34 & 35 Vict. c. 41, ss. 21, 23.

(i) 34 & 35 Vict. c. 41. By s. 11 they

are bound to furnish a sufficient supply to owners and occupiers. By s. 17 consumers are to keep meters in order, and by s. 22 the undertakers may remove the meter where the supply is not required or can be taken away or cut off. See also note (g), *ante*, p. 298.

Sect. 105. there are more owners than one, then proportionately from each owner according to the rental of the properties of each owner in any house or building or part thereof, to which access is obtained by such common stair, passage, or private court, . . . Provided always, that the said expense, recoverable by the Commissioners as aforesaid, shall not in the case of common stair lighting exceed twenty shillings per burner per annum, and in the case of all other lighting exceed twenty-five shillings per burner per annum.

Commissioners may remove, etc., lamp post, etc., where not lighted according to regulations. 106. If the Commissioners shall have given permission to any other person to erect any lamp posts, lamp globes, gas fittings, or other articles, and if the same shall not be kept lighted, or otherwise disposed, according to the orders or regulations of the Commissioners, the Commissioners may take possession of or remove the same without compensation being made therefor: Provided always, that any such lamp posts, lamp globes, gas fittings, or other articles so removed shall be delivered up to the owner thereof, in the event of his claiming the same, within six months after such removal, and paying all costs and expenses attending the removal and preservation of the same.

Cleansing

Dust, etc., collected to be vested in Commissioners. 107. The dust, night soil, dung, ashes, rubbish, filth, and manure, including slaughter-house manure, whether such slaughter-house is or is not the property of the Commissioners (excepting always cattle dung, mill dust, and the ashes of any kiln, engine, furnace, baker's oven, or the clinkers of any stove, and the refuse of any breweries, tanworks, soap, or chemical or other work), within the burgh, shall be vested in the Commissioners, who shall have power to sell and dispose of the same as they think proper, and the money arising therefrom shall be applied to the general purposes of this Act; and the Commissioners shall cause all the streets and footpaths from time to time to be properly swept and cleansed, and all the dust, night soil, dung, ashes, rubbish, filth, and manure which is found on them, or in privies, sewers, cesspools, houses, or other premises, to be collected and removed at such convenient hours and times as they shall consider proper; and in all cases where there is insufficient access for a cart or wheel-barrow to the dungstead, ashpit, or privy, the owner shall be bound to provide such access to the satisfaction of the Commissioners, and, failing his doing so, he shall be bound to pay the extra expenses of the removal as the same shall be fixed by the Commissioners, and the same shall be recoverable as a private improvement assessment.

Removal of dust, ashes, and other refuse. 109. The Commissioners may cause carts, having a covering proper to prevent the escape of the contents thereof, to pass through any street or district every morning between such hours as may be fixed by the Commissioners for the purpose of collecting and removing the dust, ashes, and other material composing the burgh refuse from the lands and premises in and adjoining such street or district; and may by public notice in one or more newspapers published or circulating in the burgh, or by handbills posted in such street or district, require the occupiers of lands and premises within and adjoining such street or district to cause all their dust, ashes, and other material composing the burgh refuse to be deposited in a suitable box to be approved of by the inspector of cleansing, and placed daily on the outer side of the foot pavement opposite the lands and premises occupied by them, or at such other place near thereto as the inspector of cleansing shall appoint, not later than the time fixed as aforesaid; and when such daily service is in operation in any such street or district, the Commissioners may direct any ashpit in connexion with the lands and premises

in or adjoining such street or district to be shut up or removed; and every occupier failing to comply with such notice shall be liable to a penalty not exceeding ten shillings for each offence. Sect. 109.

113. [Penalty for obstructing scavengers.]

114. [Penalty on persons other than scavengers removing dirt.]

115. Sweeping and washing of common stairs^(k) and passages^(l) by occupiers.]

116. The Commissioners shall keep properly swept and cleansed the foot pavement of every street, so far as is reasonably practicable, and shall collect and remove from the said foot pavements, so far as is reasonably practicable, all dust, ashes, rubbish, filth, and snow. Foot pavements to be swept by occupier.

117. [Common stairs and houses let for short periods to be cleansed by owners.](^m)

118. It shall be lawful, at all reasonable times, for the hurch surveyor, Surveyor, inspector of cleansing, medical officer of health, and sanitary inspector, to enter all dwelling-houses and other premises, and their pertinents, where he has reason to believe that they are not in a cleanly condition, and to cleanse and purify the same, and to remove any filth therefrom, at the expense of the owner of such dwelling-houses and other premises if they are unoccupied, but if they are occupied then at the expense of the occupier: Provided always, that if the owner or occupier of such dwelling-house or other premises shall object to the entrance of such surveyor, medical officer, or inspectors as aforesaid, it shall not be lawful for such surveyor, medical officer, or inspectors, to enter without a warrant from the magistrate authorizing him to do so, and the magistrate is hereby authorized to grant such warrant. Surveyor, medical officer, or inspector may enter and cleanse dwelling-houses, etc., at expense of owners.

119. Every person occupying any part of a building let out as separate dwelling-houses who shall keep the same, or any building or place appurtenant thereto, in a dirty, unwholesome, or unhealthy condition, after notice shall have been served upon him by the sanitary inspector to cleanse the same, shall be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding twenty shillings for every day during which such offence shall continue after conviction. Penalty on keeping dwelling houses in dirty condition.

120. [Arcas, etc. to be cleansed by occupiers.]

121. All stables and byres, and aras therewith connected, and roofs of out-houses, shall be constantly kept in a clean condition to the satisfaction of the inspector of cleansing or sanitary inspector by the occupier thereof, under a penalty not exceeding twenty shillings for each offence; and it shall be the duty of the inspector from time to time to examine the state of all such places, with a view to the enforcement of this enactment. Stables and byres to be kept clean.

122. It shall not be lawful to deposit, except for the purpose of removal, any cattle dung upon the streets (mews or stable lanes excepted); and no cattle dung, wherever lawfully kept, shall be mixed with any dung, soil, dirt, ashes, or filth declared by this Act to be the property of the Commissioners; and where any cattle dung shall be found in any street (excepting as aforesaid), or shall be so mixed, the same shall be taken possession of by the inspector of cleansing, and sold, and the proceeds of such sale accounted for and applied to the police purposes of this Act. Horse and cow dung to be kept off the streets.

123. It shall be lawful for the Commissioners, after inspection and report by Dungsteads, etc., to be cleaned out.

(*k*) This does not apply *semble* to persons having their proper access by a main door from the street, although entered from the common stair or passage or possibly through a passage not intended to be so

used: *Daish v. Paterson*, 4 R. 10, *cf. MacNaughton v. Smith*, 3 F. 56.

(*l*) See *Main v. Husband*, 5 F. 3.

(*m*) 3 Ed. VII. c. 33, Sched. See *Leith v. Irons*, 1907, S. C. 384.

Sect. 123. the chief constable or inspector of cleansing or sanitary inspector, to regulate and limit the time within which all common necessaries and dungsteads shall be emptied and cleaned out; and if any person, under obligation by contract or otherwise to empty or clean out such places, shall fail so to do within the time so limited, such person shall be liable in a penalty not exceeding twenty shillings, besides forfeiture of any dung in such place; which dung the inspector of cleansing, or sanitary inspector, or any officer authorized by the Commissioners, may remove or dispose of as aforesaid.

As to removal
of dung.

124. Every person who shall lay, or cause to be laid, on any street any dung or manure, or any hay or straw, for the purpose of removing the same, shall remove and take the same away before eight of the clock of the morning of the day on which it shall be so laid in any street, from the first day of October to the first day of April, and before seven of the clock of the morning from the first day of April to the first day of October; and if dung or manure shall be allowed to remain on any part of such streets after the said hours, the person offending shall be liable to a penalty not exceeding forty shillings for each offence, and that over and above the forfeiture of the dung or manure, which shall be removed and disposed of as aforesaid.

125. [Penalty for conveying offensive matter at times not authorized by Commissioners.]

As to laying
down dung on
fields, nursery,
or garden
grounds.

126. Nothing in this Act contained shall have the effect of prohibiting any person laying down dung on any field, nursery, or garden ground, for the purpose of manuring the same; but if in any case the medical officer of health shall certify that the manure so laid down in any place within the burgh is offensive or prejudicial to health, the magistrate may order it to be removed or otherwise disposed of forthwith; and every person failing to comply with such order shall be liable to a penalty not exceeding five pounds, besides the forfeiture of such manure.

Private Streets

Private streets
not properly
formed.

133. Where any private street (*n*) or part of such street has not, together with the footways thereof, been sufficiently levelled, paved, causewayed, or macadamised and flagged to the satisfaction of the council, it shall be lawful for the council to cause any such street or part thereof, and the footways, to be freed from obstructions, and to be properly levelled, paved, causewayed, or macadamised, and flagged, and channelled in such way and with such materials as to them shall seem most expedient, and completed with fences, posts, crossings, kerbstones, and gutters, and street gratings or gullies and drains for carrying off the surface water, and thereafter to be maintained, all to the satisfaction of the council. (*o*)

Private streets
may be de-
clared vested
in council.

134. If any private street or part thereof, together with the footways thereof, shall at any time be made, paved, causewayed, or macadamised and flagged, and otherwise completed as aforesaid and put in good order and condition, to the satisfaction of the council, then, and on application of any one or more of the owners of premises fronting or abutting upon such street or part thereof, or of the superior or owner of the ground on which such street or part thereof has been formed, it shall be lawful for the council to declare, and if such street or part thereof has been paved and put in good order and condition as hereinbefore mentioned, and if the owners of one-half or more of the frontage of such street

(*n*) See *Hope v. Edinburgh*, 5 R. 694; *Youden v. Jackson*, 14 R. 1001. By s. 131 a penalty is imposed on altering the level of streets other than private streets with-

out consent of the commissioners.

(*o*) 3 Ed. VII. c. 33, s. 104. See *Glasgow Railway*, 1909, S. C. 41.

or part concur in the application, the council shall declare the same to be vested in the council, and it shall be thenceforward vested in and maintained by the council. (o) Sect. 134.

135. Where, in the judgment of the Commissioners, it is not expedient that any private street should be paved or causewayed and flagged and channelled to the full extent, as above provided for, it shall be lawful for the Commissioners to cause any such private street, or any part thereof, to be only temporarily put in order; and in carrying out this enactment the Commissioners may cause all or any of the following works to be executed, viz. :—

- (1.) The carriageway to be properly levelled, and laid with road metal or such other material as they shall deem proper :
- (2.) Lines of kerb to be laid in such position to such level, and of such size, shape, and material as the Commissioners may determine :
- (3.) Channels or gutters with gratings or gullies and drains to be made to carry off the water :
- (4.) Temporary footways or crossings to be formed and made, using gravel, or road metal, or other material, to secure the public convenience :

And it shall be lawful for the Commissioners from time to time to cause such temporary works to be renewed: And provided always that the Commissioners may at any time after two years, subsequently to the execution of such temporary works, or any renewals thereof, cause the street, or any part thereof, to be permanently paved or causewayed and flagged and channelled in the manner herein provided for in regard to private streets, or to cause the footways to be permanently laid in the manner herein provided for in regard to foot pavements of streets, at any time they may deem proper, though the causeway and channels or gutters be not permanently completed till a subsequent time.

137. The whole of the costs, charges, and expenses incurred by the Commissioners in respect of private streets, including the footways, (p) fences, posts, crossings, kerbs, and gratings or gullies and drains for carrying off the surface water thereof, shall be paid and reimbursed to them by the owners of the lands or premises fronting or abutting (q) on each street, or each part of a street dealt with in proportion to the length of their frontage or abutment as the same shall be ascertained and fixed by the Commissioners or their surveyor, and the whole of such costs, charges, and expenses shall be recoverable as private improvement expenses. Expense to be paid by owners.

138. Where one or more private streets, or parts thereof serve for or lead to various premises (whether abutting on such street or streets or any part thereof or not) adjoining the same, or where, in any other circumstances, in the judgment of the council, the payment of the costs, charges, and expenses as aforesaid should not be regulated in proportion to the frontage as above provided, the council shall fix and determine the premises (whether abutting on such street or streets or any part thereof or not), the owners of which shall be liable for such costs, charges, and expenses, and the proportions leviable from each owner, as they shall consider, under all the circumstances of the case, to be just, and their determination shall be final, and the whole of such costs, charges, and expenses shall be paid by such owners and shall be recoverable as private improvement expenses. (r)

139. Each owner shall be liable only for his own proportion of the said Owners to be liable only for

(p) See *Old Aberdeen v. Leslie*, 11 R. 733.

(q) That is having access to: *Leith v. Gibson*, 9 R. 627. See *Campbell v. Edinburgh*, 19 R. 159; *Caledonian Railway v. Edinburgh*.

burgh, 3 F. 645. As to liability of owners where houses only on one side, see *Duncan v. Cousin*, 10 M. 824.

(r) 3 Ed. VII. c. 33, s. 104.

Temporary works on private streets.

Sect. 139. costs, charges, and expenses, and any owner who shall have well and substantially, and to the satisfaction of the Commissioners, levelled, made, paved or causewayed, or macadamised, and flagged and channelled, any part of such private street, or of the footways thereof, or done any of such works, shall be entitled to such relief as shall appear to the Commissioners to be just.

Right of relief, etc., not to be affected. 140. Nothing in this Act contained shall affect any right of relief in regard to the making, paving or causewaying, maintaining, or cleansing of streets which the owner or any other person may have by feu-contract or otherwise, or the right to claim repayment of any expense incurred by the Commissioners in making any street in terms of any local Act of Parliament; nor shall any liability attaching in law to any persons liable to make, pave, or causeway, maintain, or cleanse streets, or the footways thereof, be affected, altered, or abridged thereby.

Foot Pavements

Foot pavements. 141. The owners of all lands or premises fronting or abutting on any street shall, at their own expense, when required by the Commissioners, cause footways before their properties respectively on the sides of such street to be made, and to be well and sufficiently paved, or constructed with such material and in such manner and form and of such breadth as the Commissioners shall direct, and the Commissioners shall thereafter from time to time repair and uphold such footways: Provided always, that where the lands or premises of any owner front or abut on any street for a continuous length exceeding one hundred yards, and such lands or premises are unfeued or unbuilt on, or not laid out or used as a garden, or pleasure ground, or pertinent of a house, it shall not be lawful for the Commissioners to require such owner to construct such footway, but the Commissioners may themselves cause such footway to be constructed in so far as they think proper, and shall be entitled forthwith to recover from such owner one third (s) of the expense thereof, and the remaining two thirds thereof whenever the lands fronting or abutting on the footway so constructed by them are actually feued or built upon, or laid out or used as a garden, or pleasure ground, or pertinent of a house; and all expenses to be incurred by the Commissioners, in so far as recoverable from the owners, shall be recoverable as a private improvement expense: Provided that nothing contained in this section shall apply to the footways of private streets.

When Commissioners undertake maintenance of foot pavements, owners to put same in a sufficient state of repair. 142. It shall be lawful for the Commissioners to resolve, at a meeting especially called for the purpose, to undertake the maintenance and repair of all the footways of the burgh. When the Commissioners shall undertake the maintenance and repair of the foot pavements in the burgh, they shall call upon all owners to have their foot pavements before their properties put in a sufficient state of repair, and failing their doing so within six weeks, the Commissioners may cause the same to be done at the expense of such owners, and thereafter the said foot pavements shall be maintained by the Commissioners: Provided that nothing contained in this section shall apply to the footways of private streets:

Right of appeal. 143. As regards the making, altering, paving, or causewaying and maintaining streets, and foot pavements, it shall be lawful for any person whose property may be affected, and who thinks himself thereby aggrieved, to appeal to the sheriff in manner herein-after provided. (f)

(s) The cost of maintenance is in the same proportion: *Dalkeith v. Buccleuch*, 16 R. 575. See *Crieff*, 8 F. 48. A golf course is entitled to the benefit of the proviso: *Prestwick*, 1909, S.C. 5.

(f) See s. 339. Bys. 149 in laying out new streets the situation of gas and water pipes is to be altered if required by the commissioners, the expenses to be paid out of the rates. By s. 151 the commissioners may

Naming the Streets and Numbering the Houses

144. [Houses to be numbered and streets named.]

145. [Numbers of houses to be marked and renewed by owners.]

Obstructions and Line of Streets (u)

155. The Commissioners may erect across the whole or any part of any court an iron gate or gates for the purpose of preventing the public from passing through the same during such hours as they consider expedient for the purposes of police, and may cause such gate or gates to be locked and the keys thereof to be kept during the same period by the constable on duty in the district, or by some other person residing in the neighbourhood; but such gate or gates shall be so placed and managed that free and uninterrupted communication shall at all hours exist between every land or heritage in such court and some street in the neighbourhood.

156. [Commissioners may require dangerous openings in streets and courts to be built up.]

157. The Commissioners may allow, upon such terms as they think fit, any building within the burgh to be set forward (x) for improving the line of the street in which such building or any building adjacent thereto is situated.

158. When any house or building has been taken down in whole or in part in order to be altered, or is to be rebuilt (y) the Commissioners may require the same to be set backwards to or toward the line of the street, (z) or the line of the adjoining houses or buildings, or such other line as may be fixed by the Commissioners in such manner as the Commissioners may direct, for the improvement of such street: Provided always that the Commissioners shall make full compensation to the owner of any such house or building for any damage he may thereby sustain, which compensation may be settled by mutual agreement, or in the same manner as compensation for land to be taken under the provisions of the Lands Clauses Acts is directed to be settled, and shall form a charge against the general improvement rate. (a)

159. The Commissioners may give notice to the owner of any house or building requiring him to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, (b) sign-post, sign-iron, show-board, window-shutter, wall, gate, or fence, or any other projection erected or placed, after the application of this Act, against or in front of any house or building within the burgh, and which is an obstruction to the safe and convenient passage along any street, public or private; and if such owner shall not, within

make new streets, and if unfenced or un-built upon so soon as buildings are erected charge the expense without interest on the feuars or other persons erecting buildings proportionate to frontage, and if only temporarily laid out the said persons shall pave and flag and make good to the satisfaction of the commissioners as and when required by them such street to be thenceforth repaired by the commissioners.

(u) *Tramways*. Where the local authority own the tramways, 33 & 34 Vict. c. 78, *ante*, p. 294, applies.

(x) Even although it closes one end of

a public lane the alteration being part of an improvement which provides another entrance: *Rutherglen*, 7 F. 829.

(y) Extended to any new house or building proposed to be erected: 3 Ed. VII. c. 33, s. 104.

(z) *I.e.* *semble* the line of the buildings: *Schutze v. Galashiels*, 1895, A. C. 666. See *Fort William v. Kennedy*, 5 F. 215.

(a) Ss. 144, 145 and 158 may be adopted in counties: 8 Ed. VII. c. 62, s. 10.

(b) See *Thomas v. Keating*, 17 D. 1133.

Sect. 159. fourteen days after the service of such notice, comply with such requirement, he shall be liable to a penalty not exceeding forty shillings; and no person shall erect any projection or make any erection whatever in any street, public or private, without the written consent of the Commissioners, under a penalty of forty shillings for each offence: Provided that in the event of the failure of such person to remove any such projection within three days after being convicted of a contravention hereof, the Commissioners may summarily remove such projection and recover the expense of doing the same from such person. (c)

Commissioners may cause existing projections to be removed, and compensation to be made.

160. If any such obstructions, projections, or erections were erected or placed against or in front of any house or building in any such street before the application of this Act, the Commissioners may cause the same to be removed or altered as they think fit, provided that they give notice of such intended removal or alteration to the owner of the house or building thirty days before such alteration or removal is begun; and if such obstructions, projections or erections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

Doors in future to be made to open inwards.

161. All doors, gates, window-shutters, and bars put up after the application of this Act within the burgh, and which open upon any street, public or private, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the Commissioners allow such doors, gates, window-shutters, or bars to be otherwise hung or placed; and if, except as aforesaid, any such door, gate, window-shutter, or bar be hung or placed so as to open outwards on any such street, the owner of the premises to which such door, gate, or bar is attached shall, within eight days after such notice from the Commissioners to that effect, cause the same to be altered so as not to open outwards, and in case he neglects so to do, he shall be liable to a penalty not exceeding forty shillings.

Doors opening outwards may be altered.

162. If any such door, gate, window-shutter, or bar was, before the application of this Act, hung so as to open outwards upon any street, public or private, the Commissioners may alter the same, so that no part thereof, when open, shall project over any public way.

163. [Coverings for cellar doors to be made by owner.]

164. [Rain water to be conveyed from roofs of houses in pipes.]

165. [Parties aggrieved may appeal to sheriff.]

Plans of New Buildings and Regulations

Regulating existing buildings for places of public meetings, etc.

168. The council shall cause every existing building used or proposed to be used as a place of public amusement or entertainment, or for holding large numbers of people for any purpose whatsoever, to be inspected, and shall, after hearing the persons interested, direct such means to be taken for providing proper means of access to and exit from such buildings, and for protection from fire and other dangers to the public, as to the council shall seem fit. Any person who refuses access to the council or anyone appointed by them to any such building, shall be liable to a penalty not exceeding five pounds for each day during which such refusal continues, and any owner who fails to provide the means directed by the council within the period specified by them shall be liable to a penalty not exceeding twenty pounds for each day after the expiry of such period on which the building is used as aforesaid.

The dean of guild court on the application of the council may interdict, prevent, and stop the use of any such building unless and until the means directed by the council as aforesaid have been provided:

(c) See *Police Commissioners v. Kennedy*, 5 R. 215.

Provided that in any case where any such order or interdict has been granted and an appeal taken, such order or interdict shall not be operative until the whole cause has been decided on the merits by the Court of Session, and the Court of Session shall have power in any case where they may think proper to ordain the appellant to find caution as a condition of being allowed to insist on the appeal. (*d*) Sect. 168.

180. The Commissioners or their surveyor may, at any reasonable time, inspect any buildings in progress of construction or alteration, or any work connected therewith, and within one month after any new house or building, or any alteration on the structure of any existing house or building, has been completed, or before such house or building or any portion thereof has been occupied, the owner or the builder shall give notice to the clerk of the Commissioners that the house or building, or any part thereof, is ready for inspection before being occupied, and the said clerk shall thereupon transmit such notice to the surveyor of the burgh, who shall forthwith proceed to survey such house or building or alteration; and if he is satisfied that such house or building is fit for occupation, and is in accordance with the provisions of this Act, he shall grant a certificate under his hand to that effect, and all such certificates shall be entered in the register of plans and sections; and every owner or builder who shall fail to give such notice aforesaid, or shall permit such house or building or altered building to be occupied before a certificate applicable thereto has been obtained, (*e*) shall be liable to a penalty not exceeding five pounds, with an additional penalty of forty shillings for every day during which such occupation shall continue.

New houses,
etc., to be
surveyed
before occu-
pation.

Ventilation

181. Any person before beginning to alter or erect any building intended to be used as a church, chapel, or school, or a place of public entertainment, or for holding large numbers of people for any purpose whatsoever, shall give thirty days' notice in writing to the Commissioners, and shall accompany such notice with a plan and description of its proposed construction, with respect to the supplying of fresh air, and removing vitiated air; and unless the Commissioners approve thereof they may cause such building, or such part of it as they consider necessary, to be altered at the expense of the owner, which expense may be recovered as a private improvement expense; but if the Commissioners fail to signify in writing their approval or disapproval of such proposal, within seven days after their first meeting, occurring after receipt of the notice, the person giving such notice may proceed to erect the building therein referred to in the manner proposed, provided that such building be otherwise in accordance with the provisions of this Act; and with regard to such existing buildings as are at the application of this Act, or may thereafter be, used for any of the said purposes, the Commissioners may cause the same to be inspected, and may direct such means to be taken for their proper ventilation as to them shall seem fit.

Regulating
construction
of buildings
intended as
places for
public meet-
ings.

182. Provided also, if the owner or other person so intending to build, or the owner of any existing building, be dissatisfied with the determination of the Commissioners as to the said proposed manner of construction, he shall have the same right of appeal against the determination of the Commissioners, and such appeal shall be conducted in the same manner as is herein provided in

Persons may
appeal against
determination
of Commis-
sioners.

(*d*) 3 Ed. VII. c. 33, s. 104, see s. 98
(9) *post*.

(*e*) Where the owner was not aware of
P.O.

the occupation the proceedings were
quashed as nimious and oppressive:
Macarthur, 23 R. 81.

Sect. 182. the case of appeals against any order of the Commissioners with respect to works to be constructed by or subject to the approval of the Commissioners.

183. [Ventilation of habitable rooms.]

184. [Ventilation of buildings.]

185. [Common stairs, etc. to be properly lighted and ventilated.]

Precautions during the Construction or Repair of Buildings and Streets, and in regard to Old and Ruinous Tenements

186. [Bars to be erected across streets during repairs or alterations, and lights placed at night.] (f)

187. [Hoarding to be set up during repairs.] (g)

188. [Penalty for not lighting deposits of building materials or excavations.]

189. [Penalty for continuing deposits of building materials or excavations an unreasonable time.]

Dangerous places to be repaired or enclosed.

190. If any building, hoarding, or hole, or any other place, in or near any street be, in the opinion of the burgh surveyor, for want of sufficient repair, protection, or enclosure, dangerous to the passengers along such street, the Commissioners shall cause the same to be protected or enclosed so as to prevent danger therefrom, and shall be entitled to recover the expense thereof from the owner of such building or place and the persons who caused such hoarding or hole to be made respectively.

Ruinous or dangerous buildings to be taken down or secured.

191. If any building or wall, or anything affixed thereon, be deemed by the surveyor of the Commissioners to be in a ruinous state, or dangerous to passengers, or to the occupiers thereof or of the neighbouring buildings, he shall immediately cause such occupiers endangered thereby to remove from the occupancy of such buildings until the same are put into a safe condition, and shall cause a proper hoard or fence, or props, to be put up for the protection of passengers, and shall also cause, if he shall judge necessary, the neighbouring buildings to be properly shored up, and shall cause notice in writing to be given to the owner of such building or wall, if he be known, and shall also cause such notice to be put on the door of such building or on such wall, or on a conspicuous part thereof, or otherwise to be given to the occupier thereof, if any, requiring such owner forthwith to take down, secure, or repair such building, wall, or other thing, or as the case shall require; and if such owner do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs or taking down or securing as speedily as the nature of the case will admit, such surveyor may make complaint thereof to the sheriff; and it shall be lawful for the sheriff, after inquiry, to order the owner of such building, wall, or other thing to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same, or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by the sheriff; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, the Commissioners shall, with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition and dangerous as aforesaid to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite; and all the expenses of

(f) The commissioners are liable for injury caused by insufficient fencing: *Harris v. Leith*, 8 R. 613, and for the bad condition of a partly formed private road: *Carson v. Kirkcaldy*, 4 F. 18.

(g) As to dean of guild court, see 3 Ed. VII. c. 33, s. 104: *Wilson v. Mackay's Trustees*, 23 R. 13; *Barr v. Lee*, 3 F. 484; *Hunter*, 1 S. 233.

enforcing such removal and of putting up every such fence, and of shoring up such buildings, and of taking down, repairing, rebuilding, watching, or securing such building, wall, or other thing, shall be paid by the owner thereof. (h) Sect. 191.

193. If such owner cannot be found, or if such expenses are not otherwise fully recovered, the Commissioners, after giving twenty-eight days' notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building or wall, or on the land whereon such building or wall stood, and by sending through the post office to such owner's last known address a copy of such notice, may take such building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Acts in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the Commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

194. If any such building or wall as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the Commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such building or wall; and the Commissioners shall restore any surplus arising from such sale to the owner of such building or wall on demand; nevertheless, the Commissioners, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due, after the application of the proceeds of such sale, as are herein-before given to them for compelling the payment of the whole of the said expenses.

195. [Ruinous buildings belonging to two or more owners may be sold by order of sheriff.]

Public Sewers (i)

215. All sewers and drains (k) within the burgh, whether existing at the time when this Act comes into force or made at any time thereafter (except private branch drains, drains made and used for the purpose of draining, preserving, or improving land, and sewers made under any local or private Act of Parliament), shall vest in and belong to and be entirely under the management and control of the Commissioners.

217. Nothing in this Act contained shall be construed to authorize the Commissioners, contrary to any private right, to use, injure, or interfere with any sewers or other works already made or used for the purpose of draining,

(h) Ss. 191, 193, and 195 may be adopted in counties: 8 Ed. VII. c. 62, s. 10.

(i) By 1 Ed. VII. c. 24, s. 5, the powers and duties of the town council with reference to sewerage and drainage or water supply shall extend to the whole area of the burgh as existing for the purposes of the Public Health (Scotland) Act 1897 and in addition to the powers conferred by this Act or any other Act they shall have the same rights powers and privileges as are conferred by the Public

Health Act 1897 upon local authorities in districts other than burghs. This provision is by s. 8 rendered adoptive in burghs where the Act of 1892 does not apply.

(k) An open stream which flowed through a burgh and was polluted by sewage from outside the burgh but into which no part of the burgh sewage was discharged is not a sewer within this section: *Glasgow v. Macindoe*, 34 Sc. L. R. 127.

If owner cannot be found, Commissioners may take the house or ground, making compensation.

Commissioners may sell materials, restoring to the owner surplus arising from sale.

Sewers, etc., vested in Commissioners.

Private sewers or water-courses, etc., not to be used without consent.

Sect. 217. preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating lands, or to use, injure, or interfere with any watercourse, stream, river, doek, basin, wharf, quay, or towing-path in which the owner or occupier of any lands, mills, mines, or machinery, or the proprietors of any canal or navigation, shall have right and interest, without the consent in writing of the person legally entitled to grant the same; and nothing in this Act contained shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under any local or private Act of Parliament for the drainage, preservation, or improvement of land, or for or in respect of any mills, mines, machinery, canal, or navigation as last aforesaid.

Power to
Commissioners
to construct
sewers where
none exist,
making com-
pensation to
owners of
property.

219. The Commissioners shall from time to time, subject to the restrictions herein contained as to the notice to be given and the plans and estimates to be prepared, cause to be made, under the streets, or elsewhere, such main and other sewers as shall be necessary for the effectual draining of the burgh, and shall also cause to be made all such reservoirs, sluices, engines, and other works as shall be necessary for cleansing such sewers, and if needful they may carry such sewers through and across all underground cellars and vaults under any such streets, doing as little damage as may be, and making full compensation for any damage done; and may carry the same into or through any enclosed or other lands, making full compensation to the owners and occupiers thereof, and they may cause the refuse from such sewers to be conveyed by a proper channel to the most convenient site for its collection and sale, for agricultural or other purposes, as may be deemed most expedient, but so that the same shall in no case become a nuisance: Provided always, that if in making any such main and other sewers, or in repairing, constructing, or enlarging the same or existing drains or sewers, the contents at present carried into any existing outlet shall be diverted therefrom to the prejudice of any actual existing legal right, the Commissioners shall be bound to make compensation therefor; compensation under this section shall be settled in the same manner as compensation for land to be taken under the provisions of the Lands Clauses Acts is directed to be settled.

220. [Commissioners to give notice of new levels or sewers.]

221. [Meeting of Commissioners to hear objections]; and no such work to which any objection is made at such meeting shall be executed unless the burgh surveyor, after the person making such objection, or his agent, has been heard, shall certify that the work ought to be executed, nor shall such work be begun until the end of seven days after an order for the execution thereof has been duly made by the Commissioners, and entered in their books.

Where works
for sewage
provided,
streams not to
be polluted.

222. Whenever the Commissioners shall have caused pipes or other works to be laid in or along any river, burn, or watercourse within the burgh for the purpose of intercepting and conveying away the sewage which would otherwise flow into and pollute the same, it shall not be lawful for any person to introduce into any part of such river, burn, or watercourse, along which such pipes are laid, any sewage or other offensive matter or thing from any source; and the Commissioners are hereby authorized and required to allow junctions to be made with such pipes or works for the purpose of drainage of any lands and premises which would naturally fall into such river, burn, or watercourse, on such terms as they may arrange with the persons requiring such drainage, and failing such arrangement, on such terms as may be fixed by the sheriff; and the sheriff is hereby required to hear and determine any questions affecting such drainage that may be submitted to him; and every person who shall infringe the provisions of this enactment shall be liable to a penalty not exceeding five pounds,

and a further penalty not exceeding twenty shillings for each day during which such infringement shall be continued. Sect. 222.

223. [Throwing rubbish into streams forbidden.]

224. The Commissioners may from time to time, as they see fit, repair, enlarge, extend, alter, arch, or cover over, and otherwise improve all or any of the sewers vested in them: and if any of such sewers at any time appear to them to have become useless, the Commissioners may demolish and discontinue such sewer, provided that it be so done as not to create a nuisance. Commissioners may alter sewers from time to time.

225. If any person, by means of any alteration, or discontinuance of any sewer, or other proceeding of the Commissioners, be deprived of the use of any sewer or drain which such person was theretofore lawfully entitled to use, the Commissioners shall provide some other sewer or drain equally effectual for such purpose; and if the Commissioners do not within seven days after notice in writing served upon them begin, and thereupon diligently proceed, to restore to its former effective state such drain or sewer, or to provide such other sewer or drain as aforesaid, they shall forfeit to the person aggrieved a sum not exceeding forty shillings for every day after the expiration of such seven days during which he is deprived of the use of the drain or sewer to which he was so entitled, and is not provided with such other drain or sewer as aforesaid. Commissioners not to destroy existing sewers, etc., without providing others.

227. [Penalty for making unauthorized drains.] (1)

228. No building shall be erected over any sewer belonging to the Commissioners, and no vault, arch, or cellar shall be made under the carriageway of any street, public or private, without the consent of the Commissioners first obtained in writing; and if such consent be obtained all such vaults, arches, and cellars shall be substantially made, and so as not to interfere or communicate with any sewers belonging to the Commissioners; and if after this Act comes into operation in the burgh any building be erected, or any vault, arch, or cellar be made therein, contrary to the provisions herein contained, the Commissioners may demolish or fill up the same, and the expenses incurred thereby shall be paid by the person erecting such building, or making such vault, arch, or cellar. Vaults and cellars under streets not to be made without consent of Commissioners

229. [Sewers, etc., to be trapped and ventilated.]

230. The Commissioners shall have power for the purpose of providing ventilation for the existing sewers or drains, or for such sewers or drains as may hereafter be constructed, to acquire, by agreement, lands and premises, and to construct all ventilating shafts, furnaces, and other means of ventilating the sewers and other works which may from time to time be found necessary, and if for completing any works required in the execution of this provision it be found necessary to carry them upon, into, or through any enclosed or other private premises, the Commissioners shall have and may exercise the like powers and be liable to the like conditions and restrictions which are by this Act provided with reference to the construction of sewers. Ventilation of sewers.

231. The Commissioners may also arrange with the owners or occupiers of any manufactory, gaswork, or brewery, having furnace and chimney shafts so situated as to be available for the ventilation of the adjacent sewers and drains for such ventilation, or of other suitable premises, to lay and fix such ventilators, pipes, or shafts into, on, or against all such buildings or premises as to them may seem proper, and as may be agreed on, making compensation to the owners thereof. Commissioners may arrange with the occupier of any manufactory, etc.

233. [Distillers and others to construct reservoirs to deposit refuse.]

234. Any person, being the owner or occupier of any lands or premises beyond the burgh, or not included in any drainage district thereof, and in Sewers may be used by owners and occupiers

Sect. 234. respect of which he would not be liable for the payment of the rates authorized to be levied under this Act or the local authority of any district under the Public Health Acts, may, with the consent of the Commissioners in writing, upon payment to them of a reasonable sum of money, to be agreed upon between them, at his or their own expense, and under the superintendence of the surveyor of the Commissioners, cause to branch into and to communicate with any of the sewers belonging to the Commissioners any sewer or drain in respect of the said lands or premises or district which may be lawfully made therefrom, of such size and in such form of communication as the Commissioners approve of: but nothing in this Act contained shall affect any right theretofore acquired by such owner or occupier to use any of the sewers or drains belonging to the Commissioners.

Drains may be made to discharge below high-water mark.

235. If the Commissioners shall consider it necessary for public health that any drain should discharge itself below high-water mark they shall be entitled, with the consent of the Board of Trade, to construct the requisite works for that purpose under the regulations provided in regard to works authorized by this Act.

Appeal by persons aggrieved by making, etc., sewers.

237. It shall be lawful for any person whose property may be taken or injuriously affected by the making, altering, and maintaining sewers, or who may think himself thereby aggrieved to appeal to the sheriff in manner after provided. (m)

Drainage of Houses

Council may construct drains from houses, charging owners, etc., with the expense.

238. If any house or building and its pertinents be at any time not drained by a sufficient drain or pipe communicating with some sewer or with the sea, to the satisfaction of the council, and if there shall be such means of drainage within one hundred yards or any part of such house or building, the council may require the owner of such house or building to construct or lay therefrom a covered branch drain or pipe of such materials, of such size, at such level, and with such fall as they think necessary for the drainage of such house or building, its areas, waterclosets, and offices:

If there shall be no such means of drainage within such distance, the town council may require the owner to construct or lay from such house or building a covered branch drain or pipe as aforesaid, and lead the same into a covered cesspool or other place to be constructed by such owner, and such drain or pipe and cesspool shall be subject to the conditions as to construction and repair specified in section two hundred and thirty-nine:

The town council may charge and recover from the owner of any branch drain a sum not exceeding ten shillings for the supervision of each connection thereof with any sewer vested in them:

If any owner fail to commence the construction and laying of any drain or pipe, or the construction of any cesspool or other place required under this section within three weeks from the date of requisition, or to complete the same within six weeks of that date, or within such longer periods as the council may in their requisition determine, the council may themselves construct and lay, construct, or complete the same:

All expenses incurred by the council under this clause shall be recoverable from the owner of such house or building as private improvement expenses.

No house to be hereafter built without drains being constructed.

239. No house or building shall be built upon a lower level than will allow the drainage of the wash and refuse thereof to fall into some sewer belonging to the council, either then existing or marked out upon the map herein directed to

Sect. 239.

be made by them; and if there be such means of drainage existing within one hundred yards of such intended house or building, the council may require the owner of such house or building to cause a branch drain leading thereunto from the intended site of such house or building to be made of such materials, of such size, at such level, and with such fall as they think fit; or if there be no such means of drainage within one hundred yards of any part of the said intended site of such house or building, then such drain shall be made so as to lead into such covered cesspool or other place as the council direct, not being under any dwelling-house or other occupied building, and shall be constructed and kept in complete repair to the satisfaction of the council, so as effectually to prevent any leakage or effluvium therefrom until such sewer as aforesaid is made by the council, when they shall make a drain to communicate with such new made sewer, and shall demolish and fill up any such cesspool, and if any owner fails to commence the construction or repair of such branch drain, and where necessary of such cesspool, or other place within three weeks from the date of such requisition, or to complete the same within six weeks of that date, or within such longer periods as the council may in their requisition determine, the council may themselves construct or repair or complete the construction or repair of such branch drain, and where necessary of such cesspool or other place. All expenses incurred by the council under this section shall be recoverable from the owner of such house or building as private improvement expenses:

No cesspool shall be constructed within one hundred feet of any dwelling-house, or within two hundred feet of any well or spring of water, without the consent in writing of the town council. (n)

240. [Where houses are rebuilt, the level shall be sufficient to allow a drain to be constructed.]

241. [Ventilation of house drainage.] (o)

242. All branch drains, as well within as without the premises to which they belong, and all cesspools or reservoirs, shall be under the survey and control of the Commissioners, and shall be reconstructed or altered, repaired, and kept in proper order at the cost and charges of the owners of the premises to which the same belong, or for the use of which they are constructed or continued.

Drains and cesspools to be kept in good order by owners.

243. The surveyor of the Commissioners may, and when requested by the medical officer of health or the sanitary inspector shall inspect any drain or cesspool or reservoir, and for that purpose, at all reasonable times in the daytime, after twenty-four hours' notice in writing to the occupier of the premises to which such drain or cesspool or reservoir is attached, may enter upon any premises with such assistants or workmen as may be necessary, and cause the ground to be opened where he thinks fit, doing as little damage as may be; and if such drain or cesspool or reservoir be found to be in proper order and condition, he shall cause the ground to be closed and made good as soon as may be; and the expense of opening, closing, and making good such drain or cesspool or reservoir shall in that case be defrayed by the Commissioners; and all branch drains which have been opened for repairs, or for any purpose whatever, shall not be covered up before they have been inspected and tested by the Commissioners or their surveyor, which inspection and testing shall be made within twenty-four hours after notice has been given by the owner of the branch drain; and any owner or agent or builder who opens or causes to be opened, and who covers up or causes to be covered up any branch drain without such notice to the Commissioners or their surveyor shall be liable to a penalty of five pounds; and the

Inspection of drains and cesspools.

(n) 3 Ed. VII. c. 33, s. 104.

(o) See 3 Ed. VII. c. 33, s. 103, *post*.

Sect. 243. Commissioners may order such branch drain to be again uncovered for the purpose of inspection and test at the expense of the owner or agent or builder who opened or caused the drain to be opened.

Penalty on persons making or altering drains, etc., contrary to orders of Commissioners.

244. If such drain or cesspool or reservoir be on inspection found to have been constructed after this Act came into force, contrary to the directions and regulations of the Commissioners, or contrary to the provisions of this Act, or if any person, without the consent of the Commissioners, shall construct, rebuild, or unstop any drain or cesspool or reservoir, every person so doing shall be liable to a penalty not exceeding five pounds; and the Commissioners may cause such amendments or alterations to be made in any such drain or cesspool or reservoir as they think fit.

Parties aggrieved may appeal to sheriff.

245. It shall be lawful for any person whose property may be thereby taken or injuriously affected by the construction or use of house or branch drains, and who thinks himself thereby aggrieved, to appeal to the sheriff in manner herein-after provided. (p)

Soil-Pipes and Waterclosets

246. [Water and waterclosets or earth-closets to be provided on notice by Commissioners.] (g)

251. [Construction of waterclosets, etc., to be subject to approval of Commissioners.]

252. [Construction of cesspools, etc., subject to like approval.]

253. [Construction of ashpits, etc., and use of same, subject to like approval.]

254. [Owners to remove cesspools after notice.]

Power to enforce conversion of privies into waterclosets.

255. Where any privy, ashpit, or cesspool is certified by the medical officer of health to be prejudicial to health, of defective construction, or without drainage, or in a bad state of repair, or to be so situate that the removal of filth or refuse therefrom is prejudicial to health, the Commissioners may, by written notice, require the owner of the same within a reasonable time, to be specified in the notice, to reconstruct, or alter, or repair, such privy, ashpit, or cesspool, or to convert the privy into a watercloset or earth-closet, all as the case may require, to the satisfaction of the Commissioners; and the Commissioners may, if they think fit, order the removal of such privy, ashpit, or cesspool.

256. [Urinals, etc., attached to public-houses, etc., to be provided.]

Supply of Water

Power to Commissioners to construct public cisterns and pumps for supply of water to baths and wash-houses.

257. The Commissioners, except when provision is otherwise made under the authority of an Act of Parliament, shall cause all existing public cisterns, pumps, wells, conduits, fountains, and other waterworks used for the gratuitous supply of water to the inhabitants within the burgh, unless the water therein is found to be dangerous or injurious to health or unfit for dietetic purposes, to be continued, maintained, and supplied with water, or they shall substitute other such works equally convenient, and shall cause them to be maintained and supplied with water; and such public cisterns and other works shall be vested in the Commissioners, and be under their management and control; and the Commissioners may construct and maintain any number of new cisterns, pumps, conduits, fountains, and other waterworks for the gratuitous use of any persons who choose to carry the water away, not for sale, but for their own private use, and may supply with water any public baths or wash-houses.

(p) S. 339.

(g) 3 Ed. VII. c. 33, s. 104 (2) (p).

260. [Firecocks may be placed by Commissioners on pipes of water companies.] Sect. 260.

261. [Commissioners may provide supply where that of company insufficient.]

263. [In that case service pipes to be laid by the owners] and where the Service pipes. houses (r) or tenements generally in any street within the burgh shall be supplied with water by means of such service pipes it shall be competent to the Commissioners to require the owner of any tenement in such streets not so supplied to take a supply of water by connecting a service pipe with the main pipe as aforesaid; and in the event of refusal or delay on the part of such owner to comply with such requirements it shall be lawful for the Commissioners to enter such house or premises and proceed to lay down such service pipe themselves and to recover the expense thereof from such owner; and wherever it is practicable all supplies of water for domestic use shall be taken direct from the main or service pipes and not from cisterns.

264. [Water to be used only for domestic and ordinary purposes unless by agreement with the Commissioners. Where there is a surplus the same may be so supplied by agreement and in the event of disagreement] the same shall be fixed by the sheriff, upon summary application by either of the parties, and the decision of the sheriff shall be final: Provided that when water is thus supplied from such surplus, it shall not be lawful for the Commissioners to charge the parties obtaining the same both with the water assessment, (s) and also for the supply of water obtained by them; but the Commissioners may either charge the said assessment leviable on such premises or charge for the supply of water furnished to the same, as they shall think fit; . . .

265. A supply of water for domestic and ordinary purposes shall not include a supply of water for cattle or for horses, or for washing carriages, or for steam engines, or for railway purposes, or for warming or ventilating purposes in public buildings, or for working any machine or apparatus, or for any trade, manufacture, or business whatsoever, or for watering gardens by means of any tap, tube, pipe, or other such like apparatus, or for fountains, or for flushing sewers or drains, or for public baths or washhouses, or for any ornamental purpose whatever. Supply of water for domestic purposes.

266. The Commissioners may from time to time erect and maintain, or allow to be erected and maintained, in any street or public place any ornamental drinking fountain or trough. Drinking fountains.

267. With respect to the supply of water all the clauses and provisions of the Waterworks Clauses Acts, 1847 and 1863, (t) and any Act amending the same, with respect to the following matters; (that is to say), Incorporation of certain provisions of the Waterworks Clauses Acts.

The construction of the waterworks:

The communication pipes to be laid by the inhabitants:

Waste or misuse of the water supplied by the undertakers:

Guarding against fouling the water of the undertakers:

The payment and recovery of the water rates:

The recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff: shall, so far as the same are not varied by the provisions of this Act, be incorporated with this Act; and the expression "the undertakers" in the said Waterworks Clauses Acts shall, in reference to this Act, mean the Commissioners under this Act: Provided always, that the water to be supplied by the Commissioners need not be constantly laid on under pressure; . . .

(r) Does not include a golf-house: *Prestwick*, 1909, S. C. 94.

(s) 1 Ed. VII. c. 24, s. 4.

(t) See *ante*, p. 279.

Sect. 277.

Markets

Commissioners' powers as to markets, etc.

277. The Commissioners shall have power to do the following things, or any of them :

To improve any existing market places :

To provide a market place, and construct a market house and other conveniences for the purpose of holding markets :

To provide houses and places for weighing carts :

To make convenient approaches to such market :

To provide all such matters and things as may be necessary for the convenient use of such market :

To take stallages, rents, and tolls in respect of the use by any person of such market house :

But no market shall be established in pursuance hereof so as to interfere with any rights, powers, or privileges enjoyed by any person, without his consent.

For the purpose of enabling the Commissioners to establish markets in manner aforesaid, or to improve and regulate markets already established in any burgh, there shall be incorporated with this Act the provisions of the Markets and Fairs Clauses Act, 1847, and the Markets and Fairs (Weighing of Cattle) Act, 1887, (u) in so far as the same relate to markets :

With respect to the holding of the market or fair and the protection thereof; and

With respect to the weighing goods and carts; and

With respect to the stallages, rents, and tolls; and

With respect to byelaws :

Subject to this proviso, that all tolls leviable by the Commissioners in pursuance of this Act shall be approved of by the sheriff.

Slaughter-Houses

Officer of health to report on sanitary condition of slaughter-houses.

280. The medical officer of health of the burgh shall report to the Commissioners on the sanitary condition of all slaughter-houses belonging to or licensed under the Public Health (Scotland) Act 1897 (x) by the Commissioners at least twice every year, and he, as well as the sanitary inspector, and any other person who may be specially appointed by the Commissioners for the purpose, shall have right of access to such slaughter-houses at all reasonable times for the purpose of inspecting the same.

284. [If Commissioners provide slaughter-houses, no other places to be used] provided always that this enactment shall not apply to any owner or occupier within the burgh who may keep any cattle or beasts within the burgh and who may kill the same for his own or family consumption. . . .

285. [Places for slaughtering horses to be licensed.]

Saving for Acts, etc., relating to dairies, slaughter-houses, etc.

286. Nothing in or done under this Act shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1890, (y) or of any order, licence, or act of the Board of Agriculture made, granted, or done, or to be made, granted, or done thereunder, or of any order, regulation, licence, or act of a local authority made, granted, or done, or to be made, granted, or done, under any such order of the Board of Agriculture, or prohibit or interfere with the slaughter of any animals in accordance with the provisions of the said Act or of any such order, licence, or regulation.

(u) See *ante*, p. 302.

(x) 3 Ed. VII. c. 33, Sched.

(y) See now 57 & 58 Vict. c. 57, *ante*, p. 375.

287. The provisions of the Cattle Sheds in Burghs (Scotland) Act, 1866, or any Acts amending the same, may be carried into effect and enforced in the burgh by the magistrates, and offences against the same may be tried by the magistrate as police offences, and the penalties may be recovered and applied in the same way as penalties for police offences under this Act. (z)

Sect. 287.

Offences under
29 & 30 Vict.
c. 17.

Fire and Fire Establishment

289. [Penalty for wilfully setting chimneys on fire.]

290. [Penalty for allowing chimneys to catch fire.]

291. The Commissioners may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines, as they think fit, and may build, provide, or hire places for keeping such engines with their appurtenances, . . .

Fire engines
may be
provided.

292. The Commissioners may cause to be put up, at or upon the railings or in or upon the walls of buildings or elsewhere in the streets, public or private fire alarms, battery boxes and index plates, or make markings showing the position of the fireplugs in such streets or places, and may put down fireplugs in any footpath or street whether public or private, and may attach telephone or telegraph wires necessary for the working of the fire establishment to any land or heritage without being liable to any claim for compensation for so doing; and any person who shall cause any obstruction to the putting up of such plates or markings or who shall pull down, injure, deface, or destroy the same, or shall wantonly ring any such fire alarm, shall be liable to a penalty not exceeding five pounds for each offence; and any person feeling himself aggrieved as to the mode in which the Commissioners may carry out any of the powers herein contained may appeal to the sheriff, whose decision shall be final: Provided that no such telephone or telegraph wires shall be used, nor shall the powers herein contained be in any way exercised in contravention of the exclusive privileges conferred on Her Majesty's Postmaster General by the Telegraph Act, 1869.

Index plates
showing
position of
fireplugs.

293. When requested by the council to do so or on receipt of a special written report by the firemaster that suspicion of wilful fire-raising exists (a) the fire brigade may enter, and, if necessary, break into any building in the burgh being on fire, or any buildings or lands adjoining or near thereto, without the consent of any owner or occupier thereof respectively, and may do all such acts and things as they may deem necessary for extinguishing fire in any such building, or for protecting the same or rescuing any person or property therein from fire; and any damage done in the exercise of such powers shall be deemed to be damage done by fire.

Power to enter
and break open
premises in
case of fire.

294. The senior officer of the fire brigade present at any fire shall have the sole charge and control of all operations for the extinction of such fire, whether by the Commissioners' engines or appliances, or any other or others, including the fixing of the positions of fire engines and apparatus, the attaching of hose

Senior officer
of fire brigade
to have control
of operations.

(z) By s. 3 of that Act the magistrates of royal and parliamentary burghs have power to require all cattle sheds and cow-houses and byres to be inspected by an officer appointed by them. By s. 4 in the case of other burghs which have adopted the whole or portions of the Police Im-

provement (S.) Act, 1862, or the Police of Towns (S.) Act, 1850 (both of which are repealed by the Burgh Police (S.) Act, 1892), the commissioners have the like power.

(a) 3 Ed. VII. c. 33, Sched.

Sect. 294. to any water pipes or water supply, the shutting off the water from other parts of the building on fire or of adjoining buildings against which the water is to be directed.

Power to shut up streets temporarily.

295. The senior officer of the fire brigade or of police present on the occasion of any fire shall be entitled, where he considers the same necessary, to enable the fire brigade better to discharge their duties, or for the protection of the hose or other appurtenances, or for the safety of the public, to shut up temporarily by means of a guard of constables or other persons, or a rope, chain, tressels, or barricade, any street, court, or passage in or near the place where such fire exists; and every person wilfully using such street, court, or passage while it is temporarily shut up, without the consent of the fire brigade or police, shall be liable to a penalty not exceeding five pounds.

Police may retain possession of premises till case reported to burgh prosecutor.

297. The chief constable or chief officer of police shall, if he consider it necessary for the ends of justice, be entitled to retain possession of the premises in which the fire has occurred until twenty-four hours after the circumstances of the fire have been reported to the burgh prosecutor.

Fire police permitted to go beyond the limits of the burgh in certain cases.

298. The Commissioners or the firemaster may use such engines, with their appurtenances, and the said firemen, beyond the boundaries of the burgh, for extinguishing fire in the neighbourhood of the burgh; and the owner or, if the Commissioners think fit, the occupier of the premises where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the Commissioners a reasonable charge for the use of such engines, with their appurtenances, and for the attendance of such firemen; and in case of any difference between the Commissioners and the owner or occupier of such premises, the amount of the said expenses and charge shall be determined by the sheriff, whose decision shall be final; and the amount of the said expenses and charge shall be recoverable by the Commissioners as any debt may be recovered.

Public Bathing, etc.

302. [Penalty for going on ice in dangerous state or wilfully breaking.]

Seashore adjoining burgh.

303. Subject to the rights of the Crown, with consent of the Board of Trade, and without prejudice to any existing right of property, the Commissioners shall have jurisdiction over the seashore down to low-water mark, and the strand adjoining the same, within or ex adverso of the burgh, for the purpose of preventing nuisance, and preserving and improving the amenity of the burgh, with power to the Commissioners to make byelaws for regulating the use of such seashore and strand by the public for bathing, recreation, and general purposes; and, without prejudice to any existing right of property, from and after this Act coming into operation, no sewage or other offensive matter shall be allowed to run over such seashore or strand. (b)

EXECUTION OF WORKS

By Commissioners

Commissioners empowered to enter upon premises for purposes of this Act.

325. The Commissioners shall for the purposes of this Act have power, by themselves or their officers, to enter at all reasonable hours in the daytime into and upon any premises within the burgh, as well for the purpose of inspection as for the purpose of executing any work authorized to be executed by them under this Act, without being liable to any legal proceedings on account thereof:

Provided always that, except when herein otherwise provided, the Commissioners or their officers shall not make such entry, unless with the consent of the occupier, until after the expiration of forty-eight hours' notice for that purpose given to the occupier. Sect. 325.

326. [Penalty on persons obstructing Commissioners or workmen employed by them.]

327. Whenever, under the provisions of this Act, any work of any kind is required to be executed by the owner or occupier of any premises, and default is made in the execution of such work, the Commissioners (whether there be a penalty imposed for the default or not) may cause such work to be executed, and the expense incurred by the Commissioners in respect thereof shall be repaid to them by such owner or occupier. Commissioners, in default of owner or occupier, may execute works, and recover expenses.

Notices

337. [Form and service of notices.]

Appeal

339. [Appeals to sheriff or court of session.]

PART V

Assessments

353. [Recovery of assessments.]

369. [Recovery of special rates and private improvement expenses.]

PART VI

OFFENCES AND PENALTIES

Offences

380. Every person who is guilty of any of the following acts or omissions within the burgh shall, in respect thereof, be liable to a penalty not exceeding the respective amounts, or to imprisonment for a period not exceeding the respective periods herein-after mentioned; videlicet,—

To a penalty of ten pounds, or alternatively without penalty, to imprisonment for sixty days, every person who—

- (1.) Wilfully or indecently exposes his person :
- (2.) Occupies a building or part of a building, and suffers any breach of the peace or riotous or disorderly conduct within the same, or occupies a building or part of a building or other place of public resort for the sale or consumption of provisions or refreshments of any kind, and knowingly harbours prostitutes, or suffers persons of notoriously bad fame, or dissolute boys or girls, to assemble therein :
- (3.) Publishes, prints, or offers for sale or distribution, or sells, distributes, or exhibits to view, or causes to be published, printed, exhibited to view, or distributed, any indecent, or obscene book, paper, print, photograph, drawing, painting, representation, model, or figure, or publicly exhibits any disgusting or indecent object, or writes or draws any indecent or obscene word, figure, or representation in or on any place where it can

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be seen by the public, or sings or recites in public any obscene song or ballad :

To a penalty of five pounds, every person who—

- (4.) Being the occupier of a building or part of a building or other place of public resort for the sale or consumption of provisions or refreshments of any kind, knowingly suffers to remain in his premises any constable on duty, unless for the purpose of quelling any disturbance or restoring order, or directly or indirectly supplies such constable with intoxicating or exciseable liquor :
- (5.) Affixes or causes to be affixed to or on any place where it can be seen by the public, or delivers or exhibits or causes to be delivered or exhibited to any inhabitant or passenger in or near any street, or sends or causes to be sent through the post office any bill or printed or written paper of an obscene or indecent nature :
- (6.) Being the occupier of a building or part of a building or other place of public resort for the sale or consumption of provisions or refreshments of any kind or for the sale or consumption of tobacco or cigars, opens his premises for business before five o'clock in the morning, or keeps them open or does business therein after midnight, unless especially allowed by the magistrates :
- (7.) Cruelly beats, or ill-treats, over-drives, overloads, abuses, or tortures, or causes or procures to be cruelly beaten, ill-treated, over-driven, overladen, abused, or tortured, any animal, or impounds or confines, or causes to be impounded or confined, any animal, and refuses or neglects to provide and supply such animal with fit and wholesome food and water :

To a penalty of forty shillings, every person who—

- (8.) Alters or defaces the name or address, or the distinctive mark or inscription on any barrel, box, bag, plank, or other article which does not belong to him, without the authority of the owner :
- (9.) Behaves in a riotous, violent, or indecent manner :
- (10.) Commits a nuisance, or uses any obscene, abusive, or indecent language to the annoyance of any person :
- (11.) Is drunk while in charge in any street or other place of any carriage, horse, cattle, or steam engine, or when in possession of any loaded firearms :
- (12.) Uses any threatening, abusive, or insulting words or behaviour with intent or calculated to provoke a breach of the peace :
- (13.) Destroys, pulls down, injures, or defaces any board or convenience for the reception or exhibition of advertisements, or any advertisement, placard, or bill affixed thereto, or any placard or notice issued and put up by or under the direction of any lawful authority, or any notice of the position of a fireplug or hydrant, or any board on which any byelaw or part of a byelaw of any lawful authority is painted or placed :
- (14.) Damages, defaces, or makes any mark on any drinking fountain or trough, or on any work appurtenant thereto, or pollutes or makes unfit for drinking by man or animal the water in any such fountain or trough, or washes in or permits to enter into that water any dog or other animal under his charge or accompanying him :
- (15.) Prints or otherwise makes or calculates or uses, for any purpose whatever, any sham bank note, or a paper or document resembling in size, figure, and colour any bank note of any banking company.

381. Every person who in any street (and for the purposes of this section "street" shall include any harbour, railway station, canal, dépôt, wharf, towing-path, public park, links, common, or open area or space, the strand and sea beach down to low-water mark, and all public places within the burgh), commits any of the following offences shall be liable to a penalty not exceeding forty shillings for each offence: viz.,

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Penalties for certain police offences.

- (1.) Exposes for show, hire, or sale (except in a market or market-place or fair or other place lawfully appointed by the Commissioners for that purpose) any horse or other animal; or shoes, bleeds, or farries any horse or animal (except in cases of accident); or cleans, dresses, exercises, or breaks or turns loose any horse or animal; or makes or repairs any part of any cart or carriage (except in cases of accident where repairs on the spot are necessary):
- (2.) Turns loose or suffers to be at large any bull or other dangerous animal, without being secured by means of a rope attached to a ring through the nose of such animal, or otherwise:
- (3.) Exposes to public view any stallion or bull when serving any mare or cow:
- (4.) Sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal:
- (5.) Slaughters any cattle or dresses any part thereof, except in the case of any cattle over-driven or which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot:
- (6.) Having the care of any cart or carriage does not have and use bridles and reins with bits sufficient to enable him to regulate the speed of the horse or other animal drawing the same, or who not using bridle or reins does not walk on the causeway close to the side of the animal drawing such cart or carriage (or to the side of the first of such animals if there be more than one) or who rides on the shafts thereof, or otherwise than on the fore part of such cart or carriage, and in such a position as readily to see immediately before and on either side thereof or who is at such a distance from such cart or carriage, or in such a position therein, as not to have due control over every animal drawing the same; or who does not, in meeting any other carriage, keep his cart or carriage to the left or near side, or who in passing any other carriage does not keep his cart or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation); or who wilfully prevents any person or carriage from passing him, or any cart or carriage under his care:
- (7.) At the same time drives more than two carts or carriages; and while driving two carts or carriages has not the halter of the horse in the last cart or carriage securely fastened to the back of the first cart or carriage, or has such halter of a greater length from such fastening to the horse's head than four feet, or who does not otherwise securely retain control by means of a halter over the horse in the second cart or carriage:
- (8.) Rides or drives furiously, recklessly, or carelessly any horse or any horse attached to a cart or carriage, or drives furiously, recklessly, or carelessly any animal:
- (9.) While in charge of any cart or carriage used for the conveyance of goods or otherwise for slow traffic, does not draw his vehicle to the near or left side of the road, when required by any person in charge

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of a private carriage or a cab, or other such vehicle used for swift traffic, so as to allow the swift vehicle to pass the slow vehicle :

- (10.) Causes any cart or carriage, with or without horses, or any beast of draught or burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burden standing for hire in any place appointed for that purpose by the Commissioners or other lawful authority), or by any means wilfully interrupts any public crossing, or by any means wilfully causes any obstruction in any public footpath or other public thoroughfare :
- (11.) Without proper precautions, and in such manner as to be dangerous to the safety of passengers, conveys or causes to be conveyed any long, large, or heavy, keen-edged or sharp-pointed article :
- (12.) Conveys or causes to be conveyed on any cart or carriage any large box, barrel, or basket, and does not sufficiently secure such article by chains or ropes to protect the public against the risk of injury :
- (13.) Leads, drives, or rides any horse or other animal, or draws or drives any cart or carriage upon any footway, or fastens or places any horse or other animal so that it stands across or upon any footway or foot-bridge :
- (14.) Places or leaves and does not remove immediately therefrom any furniture, goods, or other articles, or places or uses any standing place, stool, bench, stall, or showboard on any footway of any street, or public thoroughfare, or places any shade, awning, or other projection, over or along any such footway, unless the same is eight feet in height at least in every part thereof from the ground : (c)
- (15.) To the annoyance or obstruction of the residents or passengers, carries about on any carriage or on horseback any picture, placard, notice, or other advertisement :
- (16.) Places, hangs up, or exposes for sale any goods, wares, merchandise, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed :
- (17.) To the annoyance or danger of the residents or passengers, hangs or places any linen or clothes or other such article on any rail or fence of any premises :
- (18.) Writes on, soils, defaces, or marks any wall, fence, hoarding, door, gate, or building, or without authority from the owner or occupier affixes or causes to be affixed to any building, or to any wall, fence, door, gate, or hoarding, any bill or other notice, or wilfully breaks, destroys, or damages any part of such wall, fence, hoarding, door, gate, or building, or any tree, shrub, seat, or other thing :
- (19.) Conveys in any open cart or carriage, or otherwise, through any public thoroughfare the carcases, or any parts thereof, of animals slaughtered for sale, without the same being properly covered up from public view ; or exposes such slaughtered carcases, or any parts thereof, or their skins or offals, outside of any shop in any street ; or uses machines to mince or hash animal food, to the annoyance of the residents :
- (20.) Carries, rolls, or drives any cask, tub, hoop, or wheel, or any ladder plank, pole, timber, log of wood, basket, board, or tray, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :

(c) *Seemle* no one need be obstructed : *Taylor v. Lamb*, 15 R. 18.

- (21.) Places any line, cord, or pole, across, upon, or over any part of any street, or hangs or places any clothes thereon, or on the outside of any window fronting any street, or on the outside of any other window so as to hang down in front of the window of any other person, or shakes carpets or mats from any window : Sect. 381.
- (22.) Being a common prostitute or streetwalker loiters about or importunes passengers for the purpose of prostitution :
- (23.) Habitually or persistently importunes or solicits, or loiters about for the purpose of importuning or soliciting women or children for immoral purposes :
- (24.) Is drunk and incapable, and not under the care and protection of some suitable person :
- (25.) To the danger or annoyance of the residents or passengers, wantonly discharges any firearm, or recklessly makes use of any sling or catapult or similar article, or throws or discharges any stone or other missile, or makes any bonfire, or sets fire to and throws any firework :
- (26.) To the danger or annoyance of the residents or passengers plays at any game, throws any snowball, or makes or uses any slide upon ice or snow, or flies any kite ; but games may be played on any rinks, links, common or public park, subject to the power of regulation by byelaws as herein provided :
- (27.) Cleanses, hoops, fires, washes, or scalds any casks or tubs or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime, or during the erection or demolition of any house or building, or otherwise, lays down or removes any lime or other material without the same being sufficiently watered to prevent the same being carried or blown about :
- (28.) Throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or glaziers' chips, or the sweepings of any house, shop, warehouse, or other premises, or other materials (except building materials so enclosed as to prevent mischief to passengers), except for the purpose of housing or removing the same, or suffers such material to remain for a longer period than is necessary :
- (29.) Beats or shakes any carpet, rug, or mat, contrary to the byelaws of the Commissioners :
- (30.) Fixes or places any flower pot or box or other heavy article at any upper window, without sufficiently guarding the same to prevent it from falling :
- (31.) Unnecessarily or without taking due precaution to prevent accidents throws from the roof or any part of any house or building any slate, brick, wood, rubbish, snow, or other thing :
- (32.) Permits any female to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building unless such window be in the sunk or basement storey :
- (33.) Wilfully jostles or annoys any person :
- (34.) Discharges any smoke or steam from any premises (otherwise than from the top thereof) into any such street, or suffers or permits the condensed water or moisture from any steampipe, flue, or funnel to fall into or upon the street :
- (35.) Leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or

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leaves defective the door, window, or other covering of any vault or cellar, or does not sufficiently fence any area, pit, or sewer left open, or leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto :

- (36.) Throws or lays any dirt, litter, or ashes or nightsoil, or any carrion, fish, offal, or rubbish, on any street, back area, court, except for the purpose of immediate removal, or on any place, or strand and sea beach, down to low-water mark, or into the channel or on the banks of any river or into any harbour within the burgh, or causes or allows any such matter, solid or liquid, to fall or run on any street, or lays down salt on any street, or footway in time of snow : But it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the person laying any such things causes them to be removed as soon as the occasion for them ceases :
- (37.) Keeps any swine near any dwelling-house so as to be a nuisance or an annoyance to the residents or passengers :
- (38.) Every baker who carries any board or basket, or chimney sweeper who carries any ladder, besom, or sack on the footpath or foot pavement, except for the purpose of crossing the same :
- (39.) Carries any basket, creel, or other burden, so as to obstruct or annoy any passenger on the footpath or foot pavement, except for the purpose of crossing the same :
- (40.) Conducts any wheeled vehicle on the footpath or foot pavement, except a perambulator or invalid carriage :
- (41.) In vending coals or other articles, shouts or calls out, or uses any bell or horn, or other instrument, to cause annoyance to any inhabitant after being requested by a constable or inhabitant to cease. (d)
- (42.) Accumulates within any enclosure, area, house, building, garret, cellar, or other apartment, any dung, soil, dirt, ashes, filth, or other offensive matter or thing :
- (43.) Places or throws upon any footpath or foot pavement any orange rind or peel, or other thing likely to cause danger to passengers :
- (44.) Wilfully and wantonly disturbs or annoys any inhabitant by pulling or ringing any door-bell, or knocking at any door, or wilfully and unlawfully extinguishes the light of any lamp or stair gas :
- (45.) Without proper precautions, places or leaves any petroleum, paraffin, naphtha, detonator, dynamite, or other combustible or explosive material, to the danger of any person :
- (46.) While in charge of any horse, cart, or carriage, falls asleep, or leads or drives any cart or carriage under his charge abreast of another or not in line, or, when required by any constable or other person, refuses to allow a free space between every two of such carts or carriages, for the purpose of crossing, or does not give his name and address when required by any person reasonably apprehending danger :
- (47.) In raising or lowering or causing to be raised or lowered any article to or from any building by means of a chain or rope, does not sufficiently secure such article and provide and use means for protecting the public against the risk of injury :
- (48.) Rides on or hangs from the back of any cart or carriage, or tramway car, without authority from the owner or person in charge thereof :

(d) See *Dawson v. Sharpe*, 25 R. 69.

- (49.) Affixes or causes to be affixed to any building any sign, signboard, or insignia of trade without the consent of the owner and occupier, or affixes or causes to be affixed or suffers to remain any projecting sign, signboard, advertising board, (e) or insignia of trade without the consent of the Commissioners: Sect. 381.
- (50.) Being the owner of any cart or carriage used for the conveyance of goods, or plying for hire, allows the same to be used without having his Christian name, surname, and place of abode painted in a straight line horizontally upon some conspicuous part on the off or right side of such cart or carriage, in legible letters, either of a dark colour upon a light ground, or of a light colour upon a dark ground, not less than one inch in height, with numbers, beginning with number one where more of such carriages respectively than one shall belong to the same owner, and proceeding in regular progression:
- (51.) Being the owner of any cart or carriage permits the same to be driven by any person who is not of the full age of fourteen years, or in any street puts a cart or carriage, and the animal yoked to the same, or any unyoked or saddled horse, temporarily under the charge or care of a person who is not of the full age of fourteen years:
- (52.) On being authorized to open the carriageway or foot pavement, shall neglect sufficiently to protect such opening at all times and to light the same at night:
- (53.) Stands, sits, loiters, or lies to the obstruction or annoyance of the residents or passengers on the footway or street or any close stair entry or doorway.
- (54.) Causes any tree, timber, beam, girder, stone, or other heavy article to be drawn or hauled otherwise than upon a wheeled vehicle.
- (55.) Throws or lays down glass, pottery, nails, wire, thorns, or other articles having sharp edges or points. (f)

Provided also that nothing contained in this section shall prejudice or affect any byelaws lawfully made by any harbour commissioners or trustees, or any prosecutions for offences under the same.

383. If any matter or thing whatever shall be placed or allowed to remain in any street, to the obstruction, annoyance, or danger of the residents or passengers, it shall be lawful to the chief constable or other constable to remove or cause the same to be immediately removed to any place of safety, there to remain at the risk of the owner and person offending, and to detain the same until the expenses of removal and detention are paid; and if such expenses are not paid within seven days, to sell or dispose of the same, and apply the proceeds as the magistrate shall direct. Power to remove articles placed in streets.

385. [Regulation of street traffic.]

386. If any cattle be at any time found at large in any street of the burgh, without any person having the charge thereof, any constable or officer of police may, if he cannot readily find the owner thereof, seize and impound such cattle, and may detain the same until the owner thereof pay to the Commissioners a penalty not exceeding forty shillings, besides the reasonable expenses of impounding and keeping such cattle. Power to impound stray cattle.

387. If the said penalty and expenses be not paid within three days after such impounding, the person by whom such cattle were seized and impounded as aforesaid, or other person appointed by the Commissioners for that purpose, may proceed to sell such cattle, or cause the same to be sold; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house Power to sell stray cattle for penalty and expenses.

Sect. 387. or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulating within the burgh in which the seizure was made; and the money arising from such sale, after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the Commissioners, and shall be by them paid on demand to the owner of the cattle so sold: Provided such balance be claimed within six months of such sale, and in default of such claim the balance shall be applied to the purposes of this Act.

Removal of furniture. 388. It shall be lawful for any constable to stop and convey to the police office and there detain, until due inquiry can be made, any cart or carriage, and any person in charge thereof or connected therewith, found within the burgh employed in removing furniture, or any person carrying furniture, between the hours of eight in the evening and six in the morning, except at the usual terms of removing observed within the burgh.

Dogs or other animals, if a nuisance or annoyance, to be removed, etc. 389. Every person who shall keep, or suffer to be kept, within any house, building, cellar, court, or area, or other premises, any dog, or any fowl, or any other animal, which is a nuisance or an annoyance to the inhabitants in the neighbourhood, and shall not remove the cause of such nuisance or annoyance within such time as the magistrate shall determine, which he is hereby authorized to do in a summary manner; and every person who shall suffer to be at large or have at large any ferocious, rabid, or vicious dog, not being muzzled, and every person who shall, after notice given by the magistrates, which they are hereby authorized to issue, directing that dogs should be confined on account of any suspicion of canine madness, suffer any dog to be at large, or have the same at large during the time specified in such notice, all such persons shall be liable to a penalty not exceeding forty shillings; and any constable may seize and take possession of any dog or other animal, being a nuisance or an annoyance as aforesaid, and not removed, if so ordered, or any ferocious, rabid, or vicious dog, not being muzzled as aforesaid, or any dog not confined after such notice, and the chief constable may cause any dog so seized to be destroyed; and he may also cause to be destroyed any dog reasonably suspected to be in a rabid state, or which has been bitten by any other dog reasonably suspected to be in a rabid state.

Street musicians. 391. It shall be lawful for any householder, personally or by his servant, or by a constable of police, to require any street musician or singer to depart from the neighbourhood of the house of such householder; and every person who shall continue to sound or play any instrument, or sing in any street, at any time after being so required to depart, shall be liable to a penalty not exceeding twenty shillings.

Penalty for persons using betting in streets. 393. If any two or more persons assemble (*g*) together in any street or open place within the burgh, for the purpose of engaging in lotteries, betting, or gaming, each of such persons shall be liable to a penalty not exceeding forty shillings.

Rules for persons using bicycles, etc. 394. Bicycles, tricycles, velocipedes, and other similar vehicles are hereby declared to be carriages within the meaning of this Act, and the following rules shall be observed by any person or persons using such carriage:

(1.) During the period between one hour after sunset and one hour before sunrise every person using such carriage shall carry attached to his

(*g*) This does not apply to a man meeting a bookmaker and handing him a slip of paper and coins: *Bonnar v. Walker*, 23 R. 39. See *Lang v. Walker*, 5 F. 8.

vehicle a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted as to afford adequate means of signalling the approach of the carriage :

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- (2.) Upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger, every such person shall, within a reasonable distance from and before passing such cart or carriage, horse, mule, or beast of burden, or such foot passenger, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage :

and any person who breaks either of these rules shall be liable for any one offence to a penalty not exceeding forty shillings.

Theatres and Places of Public Resort

401. Any constable shall have power, by virtue of his office, at any time to enter any premises or other place of the following description, and every part thereof, viz. :

Constables may enter certain premises.

- (1.) Any place to which the public are admitted, by payment or otherwise, used for the purpose of a theatre, public show, or other place of public amusement or entertainment :
- (2.) Any music, singing, or dancing saloon, or any shooting gallery, or bowling or nine-pin alley, or any place for playing skittles, or any eating-house, coffee-house, or other such place :
- (3.) Any victualling house, public-house, house, or building in which wine, spirits, beer, cider, or other exciseable or fermented or distilled liquors are sold or suspected to be sold, whether licensed or not : (h)
- (4.) Any house or building, or brothel for the reception of prostitutes, or usually frequented by thieves or loose and disorderly persons :
- (5.) Any building or part of a building which is kept or used for a purpose in respect of which a licence is required by the provisions of this Act :

(6.) Any ship or other vessel not being employed in Her Majesty's service : and every occupier or keeper of any such premises or other place, or other person having the charge thereof, who shall not admit such constable when required, shall be liable to a penalty not exceeding ten pounds.

402. [Unlicensed theatres may be entered and occupants removed by order of justice.]

Disorderly Houses and Gambling Houses

403. [Suppression of brothels, power to enter under warrant of justice.] (i)

405. [Penalty on persons keeping places for baiting animals and on persons found therein by constables acting under warrant of justice.]

406. All persons who shall be found in possession of or shall exhibit implements or articles (k) for practising games of hazard, in order to induce or

Penalty against practising games of hazard, etc.

(A) In *Southern Bowling Club v. Ross*, 4 F. 405, an action was brought for a declaration that it was illegal for the police to enter the premises in disguise. The action failed, but in giving judgment Lord Kincairney said, "I am not to be understood as professing any favour for this police method. That I think is rather for the consideration of the police authorities than for mine. It has obvious

disadvantages. It might result in breaches of the law which would not otherwise be committed, and I suppose it will be very sparingly resorted to."

(i) See *King*, 6 F. 1.

(k) Applies to a ball running between pins irregularly which may be stopped by the player by the exercise of some skill : *Forde*, 7 F. 82.

Sect. 406. entice, or who shall induce or entice, any person to play at any game of hazard, or who, by any fraudulent act or device, shall cozen and cheat or attempt to cozen or cheat any person out of any money or property, on conviction shall be imprisoned for any term not exceeding sixty days, and shall also at the same time be sentenced to repay any money or restore any property which they may have obtained by means of any such offence, and failing such payment or restoration, may, under the same procedure, be committed to or detained in prison for any further term not exceeding sixty days.

Gaming
houses.

407. It shall be lawful for the chief constable or any constable of police, having good grounds for believing that any house, room, or place is kept or used as a gaming or betting house, to enter such house, room, or place, (1) and, if needful, to use force for the purpose of effecting such entry, and to take into custody all persons who shall be found therein, and to seize all tables for and instruments of gaming found in such house, room, or place, and all moneys and securities for money found therein; and the owner or keeper of such gaming or betting house, or other person having the care or management thereof, and also any person who shall act in any manner in conducting such gaming or betting, shall be liable in a penalty not exceeding fifty pounds; and upon conviction of any such offender all such tables and instruments of gaming shall be destroyed, and all the moneys and securities for money which shall have been seized as aforesaid shall be paid over to the collector of police, and applied in the same way and manner as penalties by this Act are directed to be applied; and every person found within such premises without lawful excuse shall be liable in a penalty not exceeding ten pounds.

It shall not be necessary, in support of any prosecution under this Act for gaming in or suffering any game or gaming in such gaming or betting house, or for keeping or using or being concerned in the management or conduct of such house, to prove that any person found playing at any game was playing for any money, wager, or stake.

Suppression of Vagrants (m)

Vagrant
beggars, etc.,
to be appre-
hended, and
upon con-
viction im-
prisoned.

408. Every person found begging, or exposing wounds, or deformities, or who shall cause or permit the exposure of children of tender age to the inclemency of the weather, or causing children to sing in any street or court, or common stair, or otherwise acting so as to induce, or for the purpose of inducing, the giving of alms, and every person conducting himself as a vagrant, having no fixed place of residence, and no lawful means of getting his livelihood, shall be liable, for the first offence, to a fine not exceeding twenty shillings, or to be imprisoned for any period not exceeding thirty days, or to imprisonment for such period, without the option of a fine, and for the second or any subsequent offence, to be imprisoned for a period not exceeding sixty days.

Known or
reputed thieves
may be appre-
hended, etc.

409. Every known or reputed thief, or associate of known or reputed thieves, who is found in any house or building, or part of a house or building, or other enclosed place, or who is found frequenting any street, court, house, or building, or place adjacent, with intent to commit any crime, or who is in possession of any picklock, key, crow, jack, bit, or other implement usually employed in house-breaking, or who is found in possession of any money or article without

(1) *Semble* does not extend to a common passage leading to a common stair: *Wright*, 6 F. 18; but includes a piece of ground enclosed by walls but not roofed in which was entered by a door with a lock and was fitted up as a quoit ground: *Flannagan*,

7 F. 26. See *Clark*, 8 F. 43, and *Vallance*, *ib.* 62.

(m) Ss. 408, 410, 411, 419-425, 430 extended to counties: 8 Ed. VII. c. 62, s. 10.

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being able to give a satisfactory account of his possession thereof, may be apprehended, and, on conviction, be committed to prison for any term not exceeding sixty days; and it shall not be necessary in proving the intent to commit a crime to show that such person did any particular act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case and from his known character as proved to the magistrate it appears to such magistrate that his intention was to commit a crime. For the purpose of this section the word "crime" shall mean any description of theft, robbery, housebreaking, reset of theft, and any similar offence involving dishonesty; and any money or article found upon the accused, if not claimed by the owner within twelve months, may be forfeited and applied for the purposes of this Act.

410. It shall be lawful for any constable to apprehend and bring before the magistrate any young person found begging or sent or suffered to go out for that purpose, and also the parents of such young person, or other relations to whose control he is subject, by whom he has been so sent or suffered to go out, and also any other person by whom such young person has been so sent out; and on the complaint being established that such young person has been sent out or suffered to go out for that purpose by his parents, or either of them, or by any other relation to whose control he is subject, or has been sent out for that purpose by any other person, it shall be lawful for the magistrate to punish such parent, relation, or other person as a vagrant or disorderly person by a fine not exceeding five pounds or by imprisonment for a period not exceeding thirty days.

Procedure
against persons
sending out
children to
beg.

411. It shall be lawful for any constable to apprehend and bring before the magistrate all such beggars, vagrants, and idle poor persons, strolling or wandering or seeking relief, or found lying in any outhouse, stair, close, or area, or other place within the burgh; and it shall be lawful for the magistrate to direct and cause intimation of all such persons as he may not at the time convict of begging and vagrancy, as herein-before provided, to be sent to the inspector of the poor of the parish within which such person shall have been found, in order that their claim, if any, as paupers may be investigated and disposed of according to law; and the magistrate shall direct and cause all such persons to be detained in custody pending such investigation, and the said inspector shall be bound to report to the magistrate the result of such investigation.

Beggars and
vagrants to be
handed over to
parochial
authorities.

Articles Found or Stolen or Fraudulently obtained

412. Every person finding any goods, articles, or money shall report the fact, and deposit such goods, articles, or money with the chief constable or other officer acting for him, within forty-eight hours after the same shall have been found by such person; and every person failing so to report and deposit shall be liable to a penalty not exceeding five pounds; Provided always, that if the owner of such goods, articles, or money shall not claim the same and prove his ownership to the satisfaction of the magistrate within six months from the date of such report and deposit, the magistrate may award the same to the finder, under deduction of the expenses incurred for advertising for the owner; and where the owner shall appear and prove his ownership as aforesaid, the magistrate shall order such goods, articles, or money to be delivered to such owner, under deduction of such expenses and of such reward to the finder as in the circumstances the magistrate shall determine: Provided also, that if the owner of the same do not prove his ownership, and the finder cannot, within six months and after notice, be found, the magistrate may order such goods or

Goods, etc.,
found to be
reported to
police office.

Sect. 412. articles to be sold and the proceeds thereof, or if the subject be money, such money to be applied to the purposes of this Act.

Prevention of Fraud

Power to provide portable machines for weighing coals. 419. It shall be lawful for the Commissioners to provide, furnish and maintain such number of portable or movable machines for weighing coals as they may deem necessary, to be kept at convenient places within the burgh, in order that the inhabitants may have access to them for the purpose of reweighing their coals at their own expense, if they shall be so inclined, and to employ proper persons to attend such machines, and to establish the rates to be payable for such reweighing; and it shall be lawful for the chief constable or any other officer acting under this Act, to cause coals offered for sale or for delivery to be reweighed, and to require the driver to produce the ticket thereof, as a check on the conduct of drivers and others, such reweighing being always done free of expense.

420. [Retailers of coal to keep scales and weights for weighing at the time of delivery.]

421. [On sale of coals of half a ton weight memorandum to be delivered.]

Carter to deliver memorandum.

422. The carter or person in charge of the said coals shall be bound to exhibit such account or memorandum to any police constable who may demand the same, and immediately on his arrival at the place of delivery shall deliver the same to the purchaser or inmate or other person in charge of the house or place of delivery, under a penalty of twenty shillings for each offence in either of the said particulars.

423. [Penalty on driver refusing to weigh.]

424. [Small quantities of coals to be sold from carts and in labelled hags.]

425. [Penalty on fraudulent weighing.]

426. [Regulations may be made for preventing fraud in weight of hay, straw, etc.]

427. [Penalty on committing frauds in weight of bread.]

Power to seize diseased cattle.

428. In the case of cattle infected with or suspected of any disease within the meaning of the Contagious Diseases (Animals) Acts, 1878 to 1890, (n) being exposed or offered for sale, or being brought or attempted to be brought through any street or into any market or fair, any inspector, collector, or constable may seize any such cattle, and cause the same to be inspected by a veterinary inspector, and may report such seizures to any magistrate, and such magistrate may, after hearing the evidence, either order such cattle to be restored, or direct the same, and also any pens, hurdles, troughs, litter, hay, straw, and other articles which he may deem likely to have been infected thereby, to be forthwith destroyed, or otherwise disposed of; and any person bringing or attempting to bring any cattle through any street, or into any market or fair, knowing the same to be labouring under any such disease, shall for every such offence be liable to a penalty not exceeding twenty pounds.

Chief constable or inspector to have power to enter premises and require articles to be weighed.

430. The chief constable, or any other constable specially appointed to perform the duty by the chief constable, or any inspector of weights and measures in the burgh, may, at all reasonable hours, enter any building or part of a building, or other place within the burgh in which any article is sold, or is made up, or kept or exposed for sale by weight or measure, or in which articles are sold or are set apart, or kept or exposed for sale in numbers, or in which any article is weighed or measured, or any articles are numbered with a view to their

(n) See now 57 & 58 Vict. c. 57, *ante*, p. 375.

being bought or sold, or he may stop any cart or carriage, or any person carrying or in charge of any basket from which such articles are sold, or kept or exposed for sale, on the street, public or private, and require such article or articles to be weighed, measured, or numbered in his presence; and if the weight, measure, or number thereof ascertained does not correspond with the weight, measure, or number thereof which has been represented by the person who has sold or made up, or kept or exposed the same for sale, or who weighed, measured, or numbered the same with a view to purchase or sale, such chief constable or other constable or inspector may seize, impound, and convey such article or articles to the police office, or to an office provided for the purpose by the Commissioners, and the magistrate may sentence the person who has sold or made up, or kept or exposed the same for sale, and who has incorrectly weighed, measured, or numbered the same with a view to purchase or sale, to a penalty not exceeding five pounds, and declare such article or articles in so far as belonging to such person to be forfeited, unless such person shall prove to his satisfaction that the deficiency in weight, measure, or number has arisen without any fraudulent intent. (o) Sect. 430.

Brokers and Pawnbrokers

434. [Brokers to furnish a description of their premises and keep books.]

435. [Brokers to retain articles for fourteen days after having received them.]

436. Every broker shall, at all reasonable times, exhibit or produce, on demand, to the chief constable, or to any constable acting under him, all articles in his possession, or which he may have received or purchased, and shall also produce his books in which the description of any such articles is or should have been entered, when required, in the police court, or to the chief constable, or any constable acting under him, and having the general or special authority of a magistrate, in which book the constable requiring and obtaining production thereof shall on every occasion subscribe his name immediately following the last entry therein; and as often as it shall be found that any goods or articles which have been stolen, embezzled, or fraudulently obtained are in the possession of any broker, he is hereby required, on being informed by the chief constable or other constable authorized as aforesaid that such goods or articles were stolen, embezzled, or fraudulently obtained, to deposit the same with the chief constable, in order that they may be produced in such manner as may be necessary for the ends of justice, or upon proof of ownership, to the satisfaction of the magistrate, restored to the proper owner thereof; and every broker who shall refuse to produce and show the goods or articles in his possession, or the books in which the same ought to have been described, on being required so to do, or who shall refuse to allow the chief constable or constable requiring the said books to subscribe his name therein, or who shall not deposit any such goods or articles stolen, embezzled, or fraudulently obtained as aforesaid, shall, upon conviction before a magistrate for every such offence be liable to a penalty not exceeding five pounds, without prejudice to such broker being also proceeded against as a receiver or resetter of stolen goods according to law. Brokers to produce articles and books on demand.

437. Every pawnbroker shall at all times during his hours of business produce on demand to the chief constable, or to any constable acting under him, his books in which the articles received by him in pledge are entered, and shall exhibit to such chief constable or constable all goods regarding which information Pawnbroker to produce his book on demand.

(o) Contravention may be committed either by a person who has exposed for sale such articles, or has incorrectly weighed, measured or numbered them with a view to sale: *Barty*, 1907, S. C. 36.

Sect. 437. shall have been given tending to show or to render probable that the same have been stolen, embezzled, or fraudulently taken, and if required shall deposit the same with the chief constable for the ends of public justice, on receiving a receipt for such goods; and any pawnbroker who shall refuse to produce his books, or to exhibit and, if required, to deposit any goods as aforesaid, shall for every offence be liable to a penalty not exceeding five pounds.

438. [Brokers, etc., to report stolen goods, under a penalty for neglect.]

If stolen articles be altered or defaced by broker, he shall be held to be resetter of stolen goods.

439. If any broker shall after receiving information of the theft, or the embezzling or the fraudulent disposal of any metals, goods, or articles of whatsoever description, melt, alter, deface, or put away the same, or shall cause the same to be melted, altered, defaced, or put away without having previously received the permission of the magistrate, and if it shall be found that such metals, goods, or articles were stolen, embezzled, or fraudulently disposed of by the person from whom such broker received the same, or by any other person, then and in such case it shall be held that such broker knew that such metals, goods, or articles were stolen, embezzled, or fraudulently disposed of, and such broker shall be proceeded against according to law as a resetter of stolen goods or as being a party to the fraud, and punished accordingly; and no other evidence of his guilt shall be necessary than evidence of such melting, altering, defacing, or putting away, after receiving information as aforesaid.

440. [Brokers not to carry on business of publicans, nor to purchase tickets of pawnbrokers.]

441. [Pawnbrokers not to act as brokers, (p) and brokers not to take articles in pledge.]

442. [Pawnbroker and broker not to carry on business in the same premises.]

443. [Penalty on brokers transacting business with persons under fourteen years of age.]

444. [Penalty on brokers transacting business between certain hours.]

445. [Penalty on pawnbrokers, etc., purchasing tickets or clothing issued by charitable institutions.]

446. [Pawnbrokers not to keep smelting pots.]

447. [Brokers to have their names painted over shop doors.]

Brokers, etc., may detain suspected persons offering goods for pledge or sale.

448. It shall be lawful for any pawnbroker, or other broker or dealer, or any other person to whom any goods or articles which shall be reasonably suspected to be stolen or illegally obtained shall be offered to be pawned, sold, or delivered, and he is hereby required to detain the person offering the same, and for any officer or constable thereupon to take such person into custody, for the purpose of being examined by a magistrate, and to take possession of such goods or articles for the ends of justice, and the magistrate may, on examination, immediately discharge such person, or may, if he shall see any ground for believing that the goods or articles have been stolen or illegally obtained, remand such person to the police office, or commit him to prison for a period not exceeding three lawful days, for further examination, or till bail be given for his appearance within the said term for further examination; and if on further examination the magistrate shall be satisfied that the goods or articles were stolen or otherwise illegally obtained, he may commit the person charged to prison, to be dealt with according to law, and in that case all such goods and articles shall immediately be delivered up to and dealt with by the police as stolen or unclaimed property: Provided always, that the chief constable or other person on duty at the police office to which such person so offering such goods or articles may be taken shall, without delay,

(p) Except under ten shillings not redeemed within a year and seven days: over ten shillings not redeemed before sale: 35 & 36 Vict. c. 93, ss. 17, 18.

inquire as to the circumstances attending the possession of such goods or articles, in order to his determining, in the absence of the magistrate or burgh prosecutor, whether the party shall be immediately discharged or liberated on bail in manner hereinafter provided; . . . Sect. 448.

449. [Provisions applicable to a dealer in marine stores.]

450. [Penalty on carrying on said business without licence, and other offences.]

452. Nothing in this Act contained with respect to dealers in marine stores shall relate to or affect persons who carry on the business of a general ship chandler, or that business and the business of a ropemaker. Saving for ship chandlers or ropemakers.

Jurisdiction and Recovery of Penalties

458. [Abettors to be liable as principal offenders.]

467. Any person found committing any offence punishable either by indictment or criminal libel or upon summary conviction under this Act or under any other Act under which the magistrate has jurisdiction may without a warrant be taken into custody by any police constable . . . and the person so arrested shall be taken as soon as conveniently may be before some magistrate . . . and any constable may search any premises and may also stop search and detain any vessel boat cart or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained or fraudulently carried away may be found, and also any person who may be reasonably suspected of having or carrying in any manner anything stolen or fraudulently obtained or carried away; and any constable may seize anything stolen or unlawfully obtained or fraudulently carried away. Officers may take offenders into custody.

468. When any person having charge of any horse cart or carriage or any animal or thing shall be taken into the custody of any constable under the provisions of this Act it shall be lawful for any constable to take charge of such horse cart or carriage or animal or thing and to deposit the same in some place of safe custody as a security for payment of any expenses which may have been necessarily incurred for taking charge of and keeping the same (if the same cannot conveniently and safely be given up to the owner if known) and unless the same shall be claimed by the owner and all expenses incurred thereon paid within four days after such detention and after notice to the owner if known it shall be lawful for any two magistrates to order the sale thereof and the proceeds of such sale to be applied towards the necessary expenses incurred and the overplus if any to be paid to the owner if he can be found and if he cannot be found to be applied in the same way as fines. Horse, etc., of persons taken into custody may be secured.

469. [Persons in custody in or passing through burgh may be detained.]

470. Where any constable or officer on duty shall discover that the window or door of any house shop warehouse factory or other premises within the burgh has been left open or is unlocked or is otherwise insecure it shall be lawful for such constable or other officer to put a watchman in immediate charge thereof at the expense of the tenant or party occupying such premises [recoverable as a penalty if magistrate considers the charge reasonable]. Watchmen may be placed in charge of shops, etc., left open.

476. Every person who by virtue of this Act shall be taken into custody, and who shall be detained, may be detained in the police office or police cells, and shall be taken before the magistrate not later than in the course of the first lawful day after he shall be taken into custody, such day not being a sacramental fast day, or a day set apart for a general fast or a public holiday; . . . Provided further, that the chief constable or other person on duty at the police Persons in custody to be taken before magistrates.

Sect. 476. office or police station to which any person may be brought in custody may discharge such person from custody on being satisfied that there is no sufficient evidence to warrant a complaint against him.

Limitation. 505. All prosecutions actions or proceedings for recovery of fines penalties or forfeitures by virtue of the provisions of this Act shall be commenced within three months from the time the facts on which such prosecutions actions or proceedings were brought shall have been discovered and known to the chief constable or borough prosecutor and not thereafter.

Exemption of railway company's buildings. 517. [Ss. 180 to 195 not to apply to railway buildings other than dwelling-houses.]

Section 271.

SCHEDULE V

Regulations for Hackney Carriages

What to be hackney carriages.

(1.) Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street, within the prescribed distance, and every carriage standing upon such street within such prescribed distance, having thereon any numbered plate required by this Act to be fixed upon a hackney carriage, or any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of the Act; and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage; but no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed, shall be deemed to be a hackney carriage. . . .

(3.) [Provisions as to drivers' licences.]

(8.) [Penalty for neglect or for refusal to carry the prescribed number.]

(9.) [Penalty on driver for refusing to drive.]

(10.) Penalty for demanding more than the sum agreed for, though less than the legal fare.]

(14.) [Penalty for permitting persons to ride without consent of the hirer.]

(15.) [No person to act as driver of any carriage without the consent of the licensee.]

(16.) [Penalty on drivers misbehaving.]

(17.) [Penalty for leaving carriages unattended at places of public resort.]

(19.) [Improperly standing with carriage, refusing to give way to or obstructing any other driver, or depriving him of his fare.]

By 3 Ed. VII. c. 33 (Burgh Police (Scotland) Act, 1903)—(q)

PART I

GENERAL

Other Provisions as to Streets

Owners to fence.

15. The owners of ground fronting or abutting upon any street shall, if called upon by the town council, cause such ground to be enclosed by a sufficient temporary fence.

Footways of private streets.

16. The owner of any lands or premises fronting on any private street shall, when required by the town council, form a footway before his property of the breadth sanctioned by the dean of guild court or town council at the time when the street was sanctioned, or, if no such breadth has been specified, of such breadth as the town council shall direct, with kerbs, water

(q) By s. 3 this Act is to be read as one with the Act of 1892 (the principal Act), and the Burgh Sewerage, etc., Act, 1901.

channels, and drains for carrying off surface water, and shall well and sufficiently construct and (if required) pave such footway, or any footway that may already exist, and construct such kerbs, water channels, and drains, all with such material and in such manner and form as the town council may direct. The said owner shall further from time to time maintain and keep in repair the said footway, kerbs, water channels, and drains, or, if called upon, re-lay the same, all with such material and in such manner and form as the town council may direct. Provided that if the town council require the footway or any part thereof to be paved they shall relieve the owner of the future maintenance of such pavement. The town council may, instead of requiring the said footway to be at once paved, require the same, or such part thereof as they may specify, to be provided with kerbs, water channels, and drains, and laid with gravel, cinders, or other similar material, and may from time to time require such material to be renewed, and may at any time thereafter require the portions so laid to be paved or laid with any other material. The obligation hereby imposed upon the said owner shall cease upon the street ceasing to be a private street; but the town council shall, notwithstanding anything done under this section, be thereafter entitled (except in the case where and to the extent to which they have required the footway to be paved as aforesaid) to put in force the provisions of sections one hundred and forty-one and one hundred and forty-two of the principal Act, (r) or any other powers possessed by them with reference to the footways of public streets.

17. (1.) The town council may exercise the power conferred upon them Footways. by section one hundred and forty-two of the principal Act, either with regard to all the footways of public streets in the burgh or from time to time with regard to any portion or portions thereof. The six weeks mentioned in said section shall run from the date of the notice from the town council calling upon the owners interested to have their footways put in a proper state of repair; and where in any case in the opinion of the town council it is not expedient to have any footway put into such state of repair immediately after passing a resolution under the foresaid section applicable to it, they may defer issuing such notice until they consider it expedient to do so.

(2.) In any case where the town council may be entitled to require the construction or repair by abutting owners of footways on any street, they shall be entitled to call upon such owners to lay down paved crossings with kerbstones and water channels to the satisfaction of the town council across all entries used by carriages which cross the line of the said footways, and each such crossing shall be maintained by the owner or owners to whose premises it forms an access, and that (where there are two or more owners) in such proportions as the town council may fix.

(3.) In cases where it is desired to take carriages across a footway maintainable by the town council into the premises of any abutting owner, the town council may require the formation and maintenance by such owner of a crossing of the description above specified, or may require such owner to maintain the portion of the footway used by such carriages to their satisfaction.

(4.) Where any footway maintainable by the town council is injured by the rolling or setting down thereon of casks, boxes, or other heavy articles or material by or with the authority of any owner or occupier of premises abutting thereon, or where damage is otherwise caused to any such footway by the use thereof by or with the authority of any such owner or occupier otherwise than for ordinary foot traffic, such owner or occupier shall be liable to the town

(r) *Ante*, p. 494.

Sect. 17. council in the expense of repairing all damage so caused, and the same may be recovered as private improvement expenses.

(5.) The town council may, instead of requiring the footway of any public street to be paved under section one hundred and forty-one of the principal Act, require the fronting or abutting owners to provide the same or such part thereof as the town council may specify, with kerbs, water channels and drains, and to lay the same or such part with gravel, cinders, or other similar material, and may from time to time require the said owners to renew such material or to relay it with any other similar material all in such manner and form as the town council may direct. The town council shall, notwithstanding anything done under this subsection, be entitled at any time thereafter to put in force with regard to such footway the provisions of sections one hundred and forty-one and one hundred and forty-two of the principal Act or any other powers possessed by them with reference to the footways of streets.

18. [Owners to maintain vaults under footway taken over.]

Notice of
operations on
private streets.

20. Before executing any operations under section one hundred and thirty-three or section one hundred and thirty-five of the principal Act, the town council shall intimate their intention to do so by posting one or more handbills in the street or part of the street to be dealt with, and by sending notices to all the owners of lands or heritages fronting or abutting thereon as appearing on the valuation roll.

Private courts
to be paved.

21. The town council shall be entitled to call upon the owner or owners of, or entitled to the use of, any private court or any close, passage, or area (other than a bleaching green, garden, or shrubbery) attached to and used in common by two or more occupiers of any tenement of dwelling-houses, to pave the same (so far as not already paved to the satisfaction of the council), and to maintain, renew, and extend the pavement, all to such extent, with such material, in such manner and within such time as the town council may require, and also to make and maintain such provision for the drainage of surface water as the town council may require. In the event of more than one owner being interested in the cost of such operations, the town council shall, on the application of any owner interested, fix the proportion of cost to be borne by each; and in the event of the town council in consequence of the failure of an owner or owners to obey any requisition under this section executing the work required they shall be entitled to charge or apportion the expense upon or among the said owner or owners as they may deem just.

Buildings, Sewers, (s) etc.

23. [Receptacles for rubbish to be provided.]

24. [Penalties for failure to provide water-closets.]

Connections
with substi-
tuted sewer.

25. Where the town council has resolved to abandon any sewer vested in them and used as part of the sewage system of the burgh and to substitute a new sewer in place thereof, they shall either connect with the new sewer the branch drains connected with the abandoned sewer, making such alterations or repairs thereon as may be necessary, or construct or lay from the new sewer new covered branch drains of such materials, of such size, at such level, and with such fall as may be necessary for the drainage of houses or buildings previously drained by means of the abandoned sewer, and the expense of making such connection, alterations, and repairs, or constructing and laying such new branch drains, shall, except so far as the length of any new branch drain may exceed

that of the formerly existing branch drain, be recoverable from the owner of the house or building served thereby as private improvement expenses. Sect. 25.

27. [Temporary occupation of street by builders by permission of dean of guild court.]

29. [Penalties on unauthorized occupation of street.]

30. [Advertisements on hoardings.]

31. Every roof of a new or existing building, and every platform, balcony, stand, staging, or other structure or part thereof let, or used, or intended to be let or used, for the purpose of affording sitting or standing accommodation for a number of persons, shall be safely constructed and secured, and provided with sufficient access and exit, all to the satisfaction of the burgh surveyor, who shall be entitled to issue such notices or requisitions with regard thereto as he shall think proper. . . . Safety of roofs and platforms.

32. The dean of guild court shall, on the application of the burgh surveyor, have power to prohibit and stop the erection, use, or employment, and to order the alteration or removal of any crane, scaffolding, staging, or shoring in or connected with the construction and erection, or the demolition, alteration, repair, or securing of any new or existing building, or in or connected with any excavation for the purpose of any work authorized by the dean of guild court, where such crane, scaffolding, staging, or shoring is, or is likely to be, in the judgment of the burgh surveyor, a source of danger. Scaffoldings.

33. The burgh surveyor or any inspectors appointed by him or by the town council or any men of skill appointed by the dean of guild court, and exhibiting their authority if called upon to do so, may at any reasonable time enter upon and inspect all buildings, premises, or lands upon which any operations are being executed under decree of the dean of guild court, and all public buildings, and any person who obstructs or interferes with the burgh surveyor or such inspectors or men of skill, or who refuses to give all reasonable facilities for the purpose of such inspection, shall be liable to a penalty not exceeding five pounds for each offence. Burgh surveyor may inspect buildings.

34. The burgh surveyor may apply, or cause to be applied, any reasonable tests to determine the quality and strength of any material used or proposed to be used in the construction of any building, street, sewer or work, and the owner of such building, street, sewer or work shall, if required, provide facilities and assistance to enable him to test such quality and strength, and the determination of the burgh surveyor as to such quality and strength shall be subject to the review of the dean of guild court. Testing strengths.

The costs of such tests and the expenses of procedure connected therewith and consequent thereon shall be borne by the owner of such building, street, sewer, or work, and the dean of guild court may decern for such costs and expenses against such owner.

35. Wherever the burgh surveyor finds any operation in progress or work being done on or in connexion with any street or building contrary to the Burgh Police Acts or any byelaw thereunder, he may forthwith prohibit such operation or work for any period not exceeding one week, and may take precautions by the appointment of watchmen and otherwise to ensure that such operation or work shall not be resumed within such period; and the burgh surveyor shall forthwith bring the matter before the dean of guild court, and the dean of guild court shall be bound to hold a sitting for the disposal of the matter before the expiry of the said week, and constables of police shall be bound to render such assistance as may be required to enable the burgh surveyor to carry the provisions of this section into effect. (t) Burgh surveyor may stop infringements.

(t) By s. 40 burgh surveyor may give warrant for minor alterations.

Sect. 50.*Offences and Penalties*

Prohibition of
betting in
streets.

50. [All vehicles to carry lights.]

51. (u) If any person who conducts business of any kind in lotteries, betting, or gaming, shall in any street (x) engage in lotteries, betting, or gaming, or do any act for the purpose of inducing or enabling any other person to engage in any lottery, betting, or gaming, he shall be liable to a penalty not exceeding ten pounds for the first offence, twenty pounds for the second, and fifty pounds for any subsequent offence within the burgh. In the case of any second or subsequent offence, the offender may be sentenced to a period of imprisonment not exceeding sixty days, without the option of a fine. Any constable may take into custody, without warrant, any person who shall commit an offence under this section in view or hearing of such constable. In this section the expression "street" includes any common stair.

52. [Penalty on allowing loose paper to lie on streets.]

53. [Prevention of unnecessary noises during illness.]

Manufacture
and sale of
ice cream.

54. (1.) Any person being a manufacturer of, or merchant or dealer in, ice cream or other similar commodity, who within the burgh—

(a.) Causes or permits ice cream or other similar commodity to be manufactured, sold, or stored in any cellar or room in which there is an inlet or opening to a drain; or

(b.) In the manufacture, sale, or storage of any such commodity does any act or thing likely to expose such commodity to infection or contamination, or omits to take any proper precaution for the due protection of such commodity from infection or contamination; or

(c.) Omits on the outbreak of any infectious disease amongst the persons employed in his business to give notice thereof to the medical officer;

shall be liable for every such offence to a penalty not exceeding forty shillings.

(2.) In the event of any inmate of any building, any part of which is used for the manufacture of ice cream or similar commodity, suffering from any infectious disease the medical officer may seize and destroy all ice cream or similar commodity or materials for the manufacture of the same in such building, and the council shall compensate the owner of the ice cream, commodity, or materials so destroyed.

PART II

ADOPTIVE

Streets and Buildings (y)

62. [Corner of new building at the junction of two streets may be rounded off by order of the dean of guild court, compensation being paid by the local authority to the owner.]

Ticketing of
cubic space.

67. Any person appointed in writing by the town council may at any reasonable time enter any dwelling-house which consists of not more than three apartments for the purpose of measuring, in cubic feet, the space contained therein (exclusive of lobbies, closets, presses, and recesses), and, if the cubic contents thereof do not exceed two thousand four hundred feet, may, in such position and style as the town council see fit, mark thereon, or affix thereto a ticket on which are marked the number of such cubic feet, and the number

(u) See notes, *ante*, p. 488, and *post*, pp. 540, 541.

(x) *Smith v. Dykes*, 1907, S. C. 17.

(y) See s. 98 (9).

of persons exceeding the age of ten years who, without a breach of the provisions of this section, may sleep therein, reckoning one such person for every four hundred cubic feet; and any person who obliterates, defaces, removes, or alters such marking or ticket, shall be liable to a penalty not exceeding ten shillings.

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68. If any dwelling-house is used for the purpose of sleeping therein by a number of persons greater than is marked or ticketed thereon, in pursuance of the provisions of the immediately preceding section (every two persons of less than ten years of age being reckoned as one person exceeding the said age) every person so using the said dwelling-house, or suffering the said dwelling-house to be so used, shall be liable to a penalty not exceeding twenty shillings for every day or part of a day during which it is so used or suffered to be used, and any persons authorized in writing by the town council, and exhibiting their authority if called upon to do so, may at any time enter any dwelling-house marked or ticketed as aforesaid, if they believe that the provisions of the said section are being contravened.

Penalty on overcrowding.

Hollow Squares

69. The expression "hollow square" in the sections of this Act under the heading "Hollow Squares," shall mean and include any square, parallelogram, triangle, polygon, circle, or other regular or irregular figure of ground of a less superficial area than one acre, bounded on all sides by one or more streets in such a manner as to permit of buildings being erected on it round its margin so as entirely to enclose the interior space . . .

Provisions for openings in hollow squares.

70. [Compensation for ground taken for spaces or openings.]

71. [Compensation to form a charge on property.]

73. [Openings through existing buildings which may be purchased under the Lands Clauses Acts.]

74. Upon acquisition of the ground referred to in the immediately preceding section, the town council shall remove the buildings thereon or so much thereof as shall be necessary to make the said spaces or openings for through ventilation, and shall be entitled to recover from the whole owners of the hollow square the value of the ground necessary for the formation of such spaces or openings in manner provided in the section of this Act whereof the marginal note is "Compensation for ground taken" together with the expenses of the acquisition and valuation; but the valuator shall not be entitled to charge the said owners with any portion of the value of the buildings acquired, and shall value the ground as if the same had when so acquired been open and unbuilt upon. The portion of the cost of acquisition and expenses allocated on each owner under this section shall form a charge in terms of the section of this Act whereof the marginal note is "Compensation to form a charge on property," and the provisions of that section shall apply thereto.

Formation by town council by openings.

Sky-signs

76. (1.) It shall not be lawful to erect or fix to, upon, or in connexion with any building in the burgh any sky-sign, and it shall not be lawful to retain any existing sky-sign so erected or fixed for a longer period than three years after the date when this section comes into force nor during that period except with the licence of the town council, and in the event of such licence being granted then only for such period not exceeding three years from the said date, and under and subject to such terms and conditions as shall be therein prescribed:

Provided that in any of the following cases a licence of the town council under this sub-section shall become void, namely:—

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- (i.) If any addition to any sky-sign be made except for the purpose of making it secure under the direction of the hurch surveyor :
- (ii.) If any change be made in the sky-sign or any part thereof :
- (iii.) If the sky-sign or any part thereof fall either through accident, decay, or any other cause :
- (iv.) If any addition or alteration be made to or in the building on, over, or to which any sky-sign is placed or attached, if such addition or alteration involves the disturbance of the sky-sign or any part thereof :
- (v.) If the building, over, on, or to which the sky-sign is placed or attached, become unoccupied or be demolished or destroyed :

Provided also that if any sky-sign be erected or maintained contrary to the provisions of this section or after the licence for the erection, maintenance, or retention thereof for any period shall have expired or become void it shall be lawful for the town council to order the owner of the sky-sign to take down and remove it within a specified time, and in the event of his failing to do so to authorize the hurch surveyor to remove it, and the expense of the removal and of the proceedings with reference thereto shall be paid by the owner of the sky-sign, and may be recovered in any competent court.

(2.) Any person acting in contravention of any of the provisions of this section or of the terms and conditions (if any) of any approval, licence, or consent, under this section, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

The expression "sky-sign" shall in this section mean any word, letter, model, sign, device, or representation in the nature of an advertisement, announcement, or direction, supported on or attached to any post, pole, standard, framework, or other support, wholly or in part upon, over, or above any building, which, or any part of which sky-sign, shall be visible against the sky from some point in any street or public way and includes all and every part of any such post, pole, standard, framework, or other support. The expression "sky-sign" shall also include any balloon parachute, or other similar device employed wholly or in part for the purposes of any advertisement or announcement on, over, or above any building, or on or over any street or public way, but shall not include—

- (a.) Any flagstaff, pole, vane, or weathercock, unless adapted or used wholly or in part for the purpose of any advertisement or announcement ;
- (b.) Any sign, or any board, frame, or other contrivance securely fixed to, or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall or to the ridge of a roof: Provided that such board, frame, or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall, or parapet, or ridge to, against, or on which it is fixed or supported ;
- (c.) Any word, letter, model, sign, device, or representation as aforesaid, relating exclusively to the business of a railway company, and placed wholly upon or over any railway, railway station, yard, platform, or station approach belonging to a railway company, and so placed that it cannot fall into any street or public place.

Advertising Sites

77. [Licences for advertising sites. If illegal or unlicensed hoarding may be removed by warrant of dean of guild court.]

78. [Hoardings, etc. for advertising sites to be sanctioned by dean of guild court. If insecure may be removed by warrant.] Sect. 78.

Seashore adjoining Burgh

79. (1.) The powers of the town council under section three hundred and three of the principal Act relating to seashore and strand within a burgh shall, subject as therein mentioned, extend to the erection of retaining walls or embankments for the purpose of protecting land from the sea, and to the levelling up of the land enclosed by such walls or embankments. Provided that the consent required by the said section shall as regards any sea shore or strand under the management of the Commissioners of Woods be deemed to include the consent of such Commissioners.

Further powers relating to the foreshore of burgh.

(2.) Subject to the rights of the Crown, and without prejudice to any existing right of property, no person who does not possess or who fails to exhibit to any constable or officer of the town council requiring him so to do a written authority from a proprietor or other person having right to grant the same shall, without the consent of the town council, remove sand or gravel from the foreshore ex adverso of any burgh bounded by the sea, below high-water mark of spring-tide, or within fifty yards above said high-water mark. Any person offending against this section shall be liable to a penalty not exceeding forty shillings for each offence.

Places of Public Resort

82. (3.) The town council may at any time authorize the inspection of any house, building, part of a building, or other premises used, or suspected of being used, as an ice-cream shop or aerated water shop, (2) and the occupier, keeper, or other person having charge thereof shall give admission thereto at any time to the medical officer, sanitary inspector, constable, or any other person authorized in writing by the town council, and every occupier or keeper or other person having the charge of such premises who shall not admit such authorized person on exhibition of his authority shall be liable to a penalty not exceeding two pounds.

Ice-cream shops, etc., to be registered.

(5.) In this section the expression "ice-cream" shall include any preparation sold under the name of ice-cream or any similar title, whether containing milk or cream, or not.

Supply of Milk from Diseased Cows

83. In the sections of this Act under the heading "Supply of milk from diseased cows":— Interpretation of terms.

The expressions "dairy," "dairyman," "district," "local authority," and "medical officer" shall respectively have the same meanings as in the Public Health (Scotland) Act, 1897; and the expression "veterinary surgeon" shall mean a member of the Royal College of Veterinary Surgeons approved by the local authority for the purposes of the said sections. c. 38.

84. (1.) [Penalty for selling milk of diseased cows.]

(2.) [Penalty on failing to isolate diseased cows.]

(3.) [Obligation to notify cases of tuberculosis.]

85. It shall be lawful for the medical officer of the burgh or any person provided with, and if required exhibiting, the authority in writing of such

Power to take samples of milk.

(2) Does not include a confectioner's shop in which aerated waters are sold for consumption off the premises: *Mackay*, 8 F. 55. See *M'Laren*, 1907, S. C. 27.

Sect. 85. medical officer, to take within the burgh for examination samples of milk produced or sold or intended for sale within the burgh.

Power to inspect cows and procedure where tuberculosis due to milk within the burgh.

86. (1.) If milk from a dairy situate within the burgh is being sold or suffered to be sold or used within the burgh, the medical officer of the burgh or any person provided with, and if required exhibiting, the authority in writing of the medical officer of the burgh, may, if accompanied by a veterinary surgeon, at all reasonable hours enter the dairy and examine the cows kept therein; and, if the medical officer of the burgh or such person has reason to suspect that any cow in the dairy is suffering from tuberculosis of the udder, he may require the cow to be milked in his presence, and may take samples of the milk, and the milk from any particular teat shall, if he so requires, be kept separate, and separate samples thereof be furnished.

(2.) If the medical officer of the burgh is of opinion that tuberculosis is caused, or is likely to be caused, to persons residing in the burgh from consumption of the milk supplied from a dairy situate within the burgh, or from any cow kept therein, he shall report thereon to the burgh local authority, and his report shall be accompanied by any report furnished to him by the veterinary surgeon, and the burgh local authority may thereupon serve on the dairyman notice to appear before them within such time, not less than twenty-four hours, as may be specified in the notice, to show cause why an order should not be made requiring him not to supply any milk from such dairy within the burgh until the order has been withdrawn.

(3.) If, in their opinion, the dairyman, being a dairyman whose dairy is situated within the burgh, fails to show cause why such an order may not be made as aforesaid, the burgh local authority may make the said order, and shall forthwith serve notice of the facts on the Local Government Board for Scotland.

(4.) The said order shall be forthwith withdrawn on the burgh local authority or their medical officer being satisfied that the milk supply has been changed, or that it is not likely to cause tuberculosis to persons residing in the burgh.

Procedure when milk supplied from outside the burgh.

87. (1.) If the medical officer of the burgh has reason to believe that milk from any dairy situate outside the burgh from which milk is being sold, or suffered to be sold or used, within the burgh is likely to cause tuberculosis to persons residing within the burgh, the medical officer of the burgh shall forthwith intimate the same to the medical officer of the local authority of the district in which such dairy is situate, and the medical officer of such local authority or some person provided with and, if required, exhibiting his authority in writing accompanied by a veterinary surgeon shall be bound forthwith to examine the cows therein, and if the medical officer of such local authority, or person authorized by him as aforesaid, has reason to suspect that any cow in the dairy is suffering from tuberculosis of the udder, he may require the cow to be milked in his presence, and may take samples of the milk, and the milk from any particular teat shall, if he so requires, be kept separate, and separate samples thereof be furnished, previous notice of the time of such examination having been given to the burgh local authority in order that the medical officer of the burgh, or a veterinary surgeon, may, if they so desire, be present at the examination, and the medical officer of the local authority of such district shall forthwith report the results of the examination, accompanied by the report of the veterinary surgeon (if any), to that local authority, or any committee of that local authority, appointed under section fourteen (a) of the Public Health (Scotland) Act, 1897, and shall also furnish a copy of such report to the burgh local authority.

(2.) The local authority of such district or any committee of the local

(a) Under this section committees may be appointed.

authority appointed as aforesaid shall, unless the medical officers of the district and the burgh are both satisfied that there is at the dairy no cow suffering from tuberculosis of the udder, meet forthwith and consider the report or reports together with any other evidence that may be submitted by the parties concerned, previous notice of not less than twenty-four hours of their meeting and of the purpose thereof having been given to the dairyman and to the burgh local authority, and shall either make an order requiring the dairyman not to supply any milk from such dairy until the order has been withdrawn or resolve that no such order is necessary, and in the event of their making an order shall forthwith serve notice of the facts on the Local Government Board for Scotland and on the burgh local authority.

(3.) Where proceedings are taken or any order is made or refused to be made under this section by the local authority of a district other than a burgh it shall not be competent to appeal against the said proceedings or against the said order to the county council.

(4.) The local authority may require the dairyman not to supply milk either within or without the district, and shall give notice of the fact to the local authority of any district within which they believe milk to be supplied from such dairy.

(5.) Any such order shall be forthwith withdrawn on the local authority or their medical officer on their behalf being satisfied that the milk from the dairy is no longer likely to cause tuberculosis to persons, but notice shall be given to the burgh local authority of any proposal to withdraw the order, and an opportunity given to them of being heard and submitting evidence before the order is withdrawn.

88. (1.) If any person, after an order under either of the two preceding sections has been made, supplies any milk or sells it for consumption, in contravention of the order, he shall be liable to a penalty not exceeding five pounds, and, if the offence continues, to a further penalty not exceeding forty shillings for every day during which the offence continues.

(3.) Every dairyman and the persons in his employment shall render such reasonable assistance to the medical officer or such authorized person or veterinary surgeon as aforesaid as may be required by such medical officer, person, or veterinary surgeon for all or any of the purposes of the two preceding sections, and any person refusing such assistance or obstructing such medical officer, person, or veterinary surgeon in carrying out the purposes of such sections shall be liable to a penalty not exceeding five pounds.

(4.) It shall be open to the local authority, or any dairyman aggrieved by any resolution or order, or withdrawal of order, under either of the two preceding sections to appeal in a summary manner to a sheriff having jurisdiction in the district in which the dairy is situate, and the sheriff may either make an order requiring the dairyman to cease from supplying or selling milk, or may vary or rescind or continue any order which has been made, and he may at any time withdraw any order made under either of the two preceding sections. Pending the disposal of any such appeal the order shall remain in force.

89. If an order is made without due cause, or if the local authority unreasonably refuse to withdraw the order, the dairyman shall, if not himself in default, be entitled to recover from the local authority making the order full compensation for any damage which he has sustained by reason of the making of the order, or of the refusal of the local authority to withdraw the order, and the sheriff may determine and state whether an order the subject of appeal has been made without due cause, whether the local authority have unreasonably refused to withdraw the order, and whether the dairyman has been in fault.

Sect. 90.

90. [Expenses how to be charged]: Provided that no test for the purpose of discovering tuberculosis shall be applied except with the previous consent of the owner of such cow.

Notice to be given.

91. The town council shall cause to be given public notice of the effect of the provisions of this Act relating to supply of milk from diseased cows by advertisement in a newspaper circulating in the burgh and by handbills and otherwise in such manner as they think sufficient and the said provisions shall come into operation at such time not being less than one month after the publication of such advertisement as aforesaid as the town council may fix.

PART III

Miscellaneous

County council may adopt certain sections of Act.

97. A county council may, at a meeting called after due notice, by resolution adopt the sections of this Act whereof the marginal notes are respectively "Manufacture and sale of ice cream" and "Ice cream shops, etc., to be registered," or either of such sections, and after a date to be specified in the resolution, the adopted section or sections shall have effect throughout the county, with the substitution of "county" for "burgh," of "county council" for "town council," . . .

In this section the expression "county" shall mean a county excluding any burgh or police burgh situated therein.

Parts I. and II. how to apply.

98. (1.) Part I. of this Act shall, subject as herein-after provided, apply to every burgh to which the principal Act is applicable.

(2.) Part II. of this Act shall apply to any such burgh only if and so far as the town council shall resolve, by special order as defined in the principal Act, to adopt Part II. of this Act, in whole or part, and a town council may by such resolution adopt any section or sections of Part II. (b) Any such resolution by special order shall be intimated to the Secretary for Scotland and published in the Edinburgh Gazette, and shall come into force after such intimation and publication upon a date to be named in the resolution.

(3.) Parts I. and II. of this Act shall apply to any burgh named in Schedule II. of the principal Act, (c) only to the extent to which sections of such Parts, or either of them, may be adopted by the town council of such burgh in the manner and to the effect provided by section fifteen of the principal Act: Provided that in so far as the principal Act has at the commencement of this Act been already adopted by any of the said burghs, or in terms of the Local Government (Scotland) Act, 1894, (d) by a county council or a district committee, no amendment made in the principal Act by this Act shall apply to the portions so adopted unless the town or county council or district committee shall resolve to adopt such amendment.

(4.) Provided always that . . . a town council adopting any section of this Act under the heading . . . "Hollow squares," or "Supply of milk from diseased cows" shall adopt the whole of the sections under such heading.

(5.) After the adoption of any provisions of this Act, the provisions adopted shall prevail over the corresponding provisions (if any) in any local Act applying to the burgh.

(6.) Without prejudice to any special powers conferred by Act of Parliament upon the trustees of the Clyde Navigation the provisions of this Act shall not, except with respect to streets, sewers, drains, and sanitary provisions, apply to

(b) See *ante*, p. 488.

(d) See 57 & 58 Vict. c. 53, s. 44.

(c) See s. 5, *ante*, p. 488.

the harbour, docks, or wharves of the said trustees, or to buildings connected with such harbour, docks, or wharves other than buildings used for the purpose of human habitation so far as they are so used.

"Streets" in this subsection shall not include any road forming part of any harbour, dock, or wharf of the said trustees, or any road formed or laid out by the said trustees and used as an approach to such harbour or dock, or to land used for Clyde navigation purposes and wholly maintained by said trustees, or any private street or road the lands abutting on which and having right of access thereto belong wholly to the said trustees.

(7.) Nothing in this Act contained shall affect or prejudice the provisions of any Act relating to the harbour and docks of Leith, Aberdeen, Dundee, or Greenock.

(8.) Nothing in this Act contained shall alter, prejudice, or affect the constitution, rights, powers, or privileges, or limit the jurisdiction of the dean of guild courts of Edinburgh, Glasgow, and Dundee, or confer on or enable the town council of any of said burghs to exercise any power or jurisdiction vested in the dean of guild court thereof at the commencement of this Act, or any power in relation to or affecting the said court or the jurisdiction thereof not then possessed by the town council.

(9.) Sections twenty-three to thirty-five, inclusive, sections sixty-two to seventy-five, inclusive, and sub-division (L.) of sub-section two of section one hundred and four of this Act (e) shall not apply to the railways or stations of any railway company or buildings connected therewith otherwise than dwelling-houses.

99. Notwithstanding anything in this Act contained, it shall be in the power of the town council of any burgh to which a local Act applies, by special order as defined in the principal Act, (f) to resolve at any time after the passing and before the commencement of this Act, that any sections or subsections of Part I. of this Act specified in such special order shall not be applicable to such burgh, and that in lieu thereof the corresponding sections or subsections of such local Act (which sections or subsections shall be specified in the resolution) shall remain in force within the burgh, but, saving as aforesaid, the provisions of Part I. of this Act shall prevail over the corresponding provisions of any such local Act. Any such resolution by special order shall be forthwith intimated to the Secretary for Scotland and published in the Edinburgh Gazette, and shall come into force at the date of the commencement of this Act.

Saving of local Acts by special order.

100. Without prejudice to any existing right of His Majesty there shall be exempted from the provisions of the principal Act and this Act every building, structure, or work vested in or in the occupation of His Majesty either beneficially or as part of the hereditary revenues of the Crown, or in trust for the public service or for public services, also any building, structure, or work vested in or in the occupation of any department of His Majesty's Government for public purposes or for the public service.

Exemption of Crown property.

101. In every Act passed after the commencement of this Act unless the contrary intention appears, a reference to a royal burgh shall be deemed to include a reference to the burgh of Coatbridge.

103. Expressions used in this Act shall, unless there be something in the subject or context repugnant to such construction, have the same meaning as in the principal Act: Provided that, unless there be something in the subject or context repugnant to such construction, the expression—

(e) See 55 & 56 Vict. c. 53, s. 163, *ante*.

(f) See *ante*, p. 438.

Sect. 103.

- (1.) "Building" shall, in the principal Act and this Act, include any structure or erection of what kind or nature soever, whether temporary or permanent, and every part thereof, but shall not include the hoardings mentioned in section one hundred and eighty-seven of the principal Act, or any hoarding or similar structure to be used only for advertising purposes not exceeding twelve feet in height.
- (2.) "Lano" shall, in the principal Act and this Act, mean any street of fifteen feet or under in width which is used wholly or mainly for access to stables or other buildings not abutting upon a street of greater width, or as a back access to dwelling-houses or other buildings facing a street of greater width :
- (3.) "Part of a street" shall, in the principal Act and this Act, mean any area within a street, whether including the whole width of the street or not :
- (4.) "Public building" shall, in the principal Act and this Act, mean a building used or constructed, adapted, or altered to be used as a church, chapel, or other place of public worship, or as a school, college, or place of instruction (not being merely a dwelling-house so used), or as a hospital, poor-house, public theatre, public music-hall, public hall, public concert room, public ball-room, public lecture-room, public library, or public exhibition room, or as a public place of assembly, or a building used or constructed or adapted to be used for any other public purpose, and shall include a building used or constructed or adapted to be used as a hotel, lodging-house, home, refuge, or shelter where such building contains space extending to more than two hundred and fifty thousand cubic feet, or has sleeping accommodation for more than one hundred persons :
- (5.) "Public street" shall, in the principal Act and this Act, mean (1) any street which has been or shall at any time hereafter be taken over as a public street under any general or local Police Act by the town council or commissioners ; (2) any highway within the meaning of the Roads and Bridges (Scotland) Act, 1878, vested in the town council ; (3) any road or street which has in any other way become or shall at any time hereafter become vested in or maintainable by the town council ; and (4) any street entered as a public street in the register of streets made up under this Act : (g)
- (6.) "Private street" shall in the principal Act and in this Act mean any street other than a public street :
- (7.) "Drain" shall, in sections two hundred and forty-one to two hundred and forty-five inclusive, of the principal Act, include all soil pipes and all other pipes, traps, and apparatus used for or in connexion with the removal of sewage or waste water.

The Adulteration, Diseases of Animals, and Explosives Acts apply. (h)

(g) See *Perth*, 1909, S. C. 114.

(h) *Ante*, pp. 255-257.

2. INHERENT POWERS

CONSTABLES

Arrest.—The power of a constable to arrest here is confined to breaches of the peace or threat of violence in his presence, (a) drunkenness, Sabbath-breaking and swearing, (b) and to those offences specified below. Breach of the peace extends to a party casting off his clothes in the street and making noise and disturbance, (c) to marching on Sunday playing a concertina and leading a procession who sing and shout, and refusing to desist when asked to do so by a constable, (d) to brawling, (e) and to persons obstructing, interrupting and disturbing a public meeting, (f) but abusive words merely are not sufficient. (g)

The following statutes apply : Diseases of Animals, Explosives, Hawkers, Indecent Advertisements, Gun, Merchant Seamen, Pedlars, Post, (h) and Street betting. (i)

As to cruelty to animals, by 13 & 14 Vict. c. 92 (The Cruelty to Animals (Scotland) Act, 1850)—

1. Any person who shall from and after the passing of this Act cruelly beat, ill-treat, over-drive, abuse, or torture, (k) or cause or procure to be cruelly beaten, ill-treated, over-driven, abused, or tortured, (l) any animal, shall be guilty of an offence, and shall for every such offence be liable to a penalty not exceeding five pounds.

2. Every person who shall keep or use or act in the management of any place (m) for the purpose of fighting or baiting any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature, or shall permit or suffer any place to be so used, shall be guilty of an offence, and every such

Inherent powers.
Constables.
Arrest.

Diseases of animals, etc.

Cruelty to animals.

Penalty for ill-treating, over-driving, etc., animals
Penalty on persons keeping places for bull-baiting, dog-fighting, etc.;

(a) *Peggie v. Clerk*, 7 M. 89; *Deakin v. Milne*, 10 R. 22.

(b) See *Smith Reparation*, 253.

(c) *Ainslie*, 1 Brown 25.

(d) *Whitchurch v. Millar*, 23 R. 1.

(e) *Dougal*, 4 Irv. 101.

(f) *Hendry v. Ferguson*, 10 R. 63; cf. *Armour v. Macrae*, 13 ib. 41.

(g) *Banks*, 3 Comp. 359.

(h) *Ante*, pp. 375-403.

(i) Passage in that Act includes common close or stair or passage leading thereto.

(k) See *Cornelius v. Grant*, 7 R. 13; *Jack v. Campbell*, 8 ib. 1. Dishorning is not an offence if skilfully performed; *Renton*, 15 R. 8; *Todrick*, 18 ib. 41.

(l) Knowledge of the pain caused, by the defendant is *semble* material: *Sharp*, 44 J. 415; *Wilson*, 1 R. 16. As to exposing a horse to cold, see *Anderson*, 9 R. 6, and cf. *Wright*, 17 R. 28.

(m) Does not apply to a plantation and an old road: *Brown*, 19 R. 22.

Sect. 2.

offender shall be liable to a penalty not exceeding five pounds for every day he shall so keep or use or act in the management of any such place, or permit or suffer any place to be used as aforesaid: Provided always, that every person who shall receive money for the admission of any other person to any place kept or used for any of the purposes aforesaid shall be deemed to be the keeper thereof; and every person who shall in any manner encourage, aid, or assist at the fighting or baiting of any bull, bear, badger, dog, cock, or other animal as aforesaid, shall be guilty of an offence, and be liable for every such offence to a penalty not exceeding five pounds.

Keepers of slaughter-houses for killing horses or other animals not intended for food to be licensed.

Persons licensed to affix over door, etc., a board with their names, and the words "licensed for slaughtering horses," etc. Penalty for neglect.

Description of horses, etc., received for slaughtering to be entered in a book.

Penalty for neglect to make entry or produce book.

Offenders to be apprehended and taken before magistrate.

Time of preferring complaint.

Vehicles, etc., in charge of persons apprehended may be detained as

3. No person shall keep or use any house or place for the purpose of slaughtering or killing any horse or other animal (which shall not be intended for butchers' meat) without first taking out a licence for that purpose, which licence every sheriff within his own county is hereby authorized to grant, upon being satisfied that the person applying for such licence is a proper person for keeping such house or place, and upon payment of a sum not exceeding five shillings to the sheriff clerk for making out and recording such licence; and a copy of such licence shall be recorded in the sheriff clerk's books; and any person shall at all reasonable hours be entitled to inspect such books, and to make any extract relating to such licence therefrom, upon payment to the sheriff's clerk of sixpence for such inspection and extract; and every person so licensed shall cause to be painted in large legible characters, on a board to be affixed over the gate or door of such house or place, his or her name, with the words "Licensed for slaughtering horses, pursuant to an Act passed in the session of Parliament holden in the thirteenth and fourteenth years of the reign of her Majesty Queen Victoria"; and any person failing so to do shall be guilty of an offence, and shall be liable to a penalty not exceeding five pounds for such offence, and a farther penalty of five pounds for every day during which such board shall not be so affixed.

4. Every person keeping or using or having the management of any place for slaughtering horses or other cattle (not intended for butchers' meat) shall, at the time of receiving any horse or other cattle in such place, enter in a book such a full and correct description of the colour, marks, and gender of such horse or other cattle as may clearly distinguish and identify the same; and if any such person shall refuse or neglect to make such entry in a clear and distinct manner, or shall refuse or neglect to produce such book before any magistrate, whenever required by such magistrate so to do, or shall refuse to allow such book to be inspected, and extracts to be made therefrom, at all reasonable times, by any constable or other person duly authorized by such magistrate, every such person shall be guilty of an offence, and be liable to a penalty for every such offence not exceeding forty shillings.

6. When and so often as any of the offences against the provisions of this Act shall be committed, it shall and may be lawful for any constable, upon his own view thereof, or upon the complaint and information of any other person who shall declare his or her name and place of abode to the said constable, to seize and secure, by the authority of this Act, any offender, and forthwith, without any other authority or warrant, to convey such offender before a magistrate, to be dealt with for such offence according to law.

7. Every complaint under the provisions of this Act shall be made within one calendar month after the cause of such complaint shall arise; . . .

9. Whenever any person having charge of any vehicle or any animal shall be taken into custody by any constable for any offence against the provisions of this Act, it shall be lawful for such constable to take charge of such vehicle or animal, and deposit the same in some place of safe custody, as a security for

payment of any penalty to which the person having had charge thereof, or the owner thereof, may become liable, and for payment of any expenses which may have been or may be necessarily incurred for taking charge of and keeping the same; and it shall be lawful for any magistrate before whom the case shall have been heard to order such vehicle or such animal to be sold, for the purpose of satisfying such penalty and reasonable expenses, in default of payment thereof. Sect. 9.
security for
payment of
penalty and
expenses, and
may be ordered
to be sold.

11. The following words and expressions shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,) . . . Interpretation
of terms.

The word "animal" shall be taken to mean any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal: or any game or fighting cock or other domestic fowl or bird: (n)

The word "constable" shall be taken to mean any sheriff officer, police officer, special constable, justice of peace constable, or any person belonging to any constabulary force in any part of the United Kingdom:

The word "over-drive" shall also signify "override."

As to escape, see *ante*. (o)

As to highways, see *ante*. (p)

As to licensing—

Escape.

Highways.

Licensing.

Every person who shall be riotous quarrelsome or disorderly in any shop house premises or place licensed for the sale of exciseable liquors by retail whether to be consumed on the premises or not and shall refuse or neglect to quit such shop house premises or place upon being requested so to do by the occupier or manager thereof or his agent or servant or by any constable and every person who shall refuse to quit such shop premises or place at the time of closing prescribed under the provisions of the Licensing (Scotland) Act 1903 (q) on being required to do so as aforesaid shall thereby be guilty of an offence and may be taken into custody by any constable and detained in any police office or police cells or other convenient place and not later than in the course of the first lawful day after he shall have been so taken into custody shall be brought before a sheriff or any one justice: (r) And so may every person found in a state of intoxication and incapable of taking care of himself and not under the care or protection of some suitable person in any street thoroughfare or public place whether a building or not or on any licensed premises and every person who is drunk while in charge in any street or other place of any carriage horse cattle or steam-engine or when in the possession of any loaded fire-arms: (s) And every person found in any shebeen drunk or drinking (t) or hawking exciseable liquors. (u) Expelling
drunken
persons.
Persons drunk
in streets,
or shebeen, and
persons hawk-
ing liquors.

(n) 58 Vict. c. 13. Every person who shall in any manner encourage aid or assist at any cock fight whether in a place kept for that purpose or otherwise shall be guilty of an offence under the Act.

(o) P. 375.

(p) P. 451.

(q) This is fixed by the licensing Court: s. 35.

(r) 3 Ed. VII. c. 25, s. 68.

(s) S. 70: "public place" shall include any railway station and any place to which

the public have access whether on payment or otherwise and any public conveyance, and "carriage" and "cattle" have the same meanings as in 55 & 56 Vict. c. 55, *ante*, p. 486.

(t) S. 75. *Shebeen* = every house, shop, room, premises, or place in which exciseable liquors are trafficked in by retail without a certificate and excise licence: s. 107.

(u) S. 67.

- Reasonable charge. As to the liability where a charge is preferred by another person. (x)
- Vagabonds. Persons again becoming chargeable or deserting family (y) are liable.
S. 4 of the Vagrant Act applies. (z)
- Burgh. Burgh.—As to the power to arrest in burghs. (a)
- County. County.—The power here is apparently as far as applicable the same. (b)
- Entry. Entry.—(1.) It shall not be lawful for any person holding a licence or certificate for the sale of exciseable liquors or any servant of such person—
- Distribution of liquor from vans. (a.) To sell distribute or deliver to a customer any exciseable liquor from any van or other vehicle unless before such van or other vehicle leaves the premises in respect of which such licence or certificate is held such liquor has been ordered by the customer and the amount thereof to be sold distributed or delivered has been entered in a delivery book pass book or invoice and in a day book, which delivery book pass book or invoice shall be carried by the driver of such van or other vehicle and which day book shall be retained in the aforesaid premises and such delivery book pass book or invoice as well as such day book shall specify the name and address of each person to whom such liquor is being conveyed and the quantity and description of liquor to be delivered to each person or
- (b.) to carry in any such van or other vehicle while in use for distribution or delivery to customers any exciseable liquor not entered in the delivery book pass book or invoice and in the day book or
- (c.) to deliver from such van or other vehicle any exciseable liquor to any person other than a person whose name and address are specified as aforesaid or any one authorized by such person to receive such liquor at the address so specified.
- (2.) It shall be lawful for any constable to examine at any time any such van or other vehicle used for carrying exciseable liquors and the driver of such vehicle and the holder of the licence or certificate or his servant having custody of the day book hereinbefore mentioned shall be bound to exhibit to any constable for his examination his delivery book pass book invoice or day book as the case may be. (c) And for any chief constable superintendent lieutenant or inspector of police at any time to enter and inspect any eating-house temperance hotel shop or other place or any boat or vessel where food or drink of any kind is sold to be consumed on the premises or in which he shall have reason to believe that exciseable liquors of any kind are being unlawfully trafficked in; and it shall be lawful for any constable having an authority in writing from any justice of the peace or magistrate or from any chief constable superintendent lieutenant or inspector of police in any county district or burgh and which they are severally hereby authorized to grant to enter and inspect any
- Refreshment houses, etc.
- By order of justice.
- (x) See *Beattie v. McLellan*, 8 D. 930.
(y) 8 & 9 Vict. c. 83, ss. 79, 80.
(z) 54 & 55 Vict. c. 69, s. 7. See *ante*, p. 400.
(a) See 55 & 56 Vict. c. 55, ss. 86-88, 91-93, 100, 380, 381, 391, 393, 394, 408-411, and 476, *ante*, p. 488, *et. seq.*, and 3 Ed. VII. c. 33, s. 51, *ante*, p. 525, and as to Holyrood and Linlithgow Parks, *ante*, p. 414.
(b) See 20 & 21 Vict. c. 72. As to lock-ups, 40 & 41 Vict. c. 53, s. 30.
(c) 3 Ed. VII. c. 25, s. 63.

such eating-houses temperance hotels shops or places or any such boats or vessels within such county district or burgh respectively at any time or times within 8 days from the date of such writing as may be specially mentioned in such writing . . . And for any officer of police or constable of any county district or burgh without any written authority at any time to enter and inspect any licensed inn and hotel or public-house therein situated and also where he shall have reason to believe that a breach of certificate is being committed, at any time without written authority to enter and inspect the premises of any grocer or provision dealer trading in exciseable liquors. (*d*)

Burgh.—As to the power in burghs. (*e*) Burgh.

Seizure.—There is general power to seize carts, etc., of offenders under the Highways and Cruelty to Animals Acts. (*f*)

Burgh.—As to the powers in burghs. (*g*) Burgh.

Bail.—This power is practically as in England. (*h*) Bail.

GAOLERS

Civil prisoners are treated specially under rules. (*i*) Gaolers.

THE DISEASES OF ANIMALS, CRUELTY TO ANIMALS, EXPLOSIVES, FACTORIES, MINES, MERCHANT SHIPPING, RAILWAY AND ALKALI ACTS APPLY. (*k*) Diseases of animals, etc.

WATER BAILIFFS

By 31 & 32 Vict. c. 123 (the Salmon Fisheries (Scotland) Act, 1868)—

25. In order the better to carry out the provisions of the Act of the seventh and eighth years of Her present Majesty, chapter ninety-five, it shall be lawful for any water bailiff, constable, watcher or officer of any district board, or any police officer, to search all boats, boat tackle, nets, or other engines, and all receptacles, whether at sea or on shore, which he or they may have reason to suspect may contain salmon captured in contravention of the said last-mentioned Act, and to seize all salmon found in the possession of persons not having a right to fish salmon, and the possession of such salmon shall be held prima facie evidence of the purpose of the possessor to contravene the provisions of the said last-mentioned Act: Provided also, that the words "the said recited Act" contained in the second section of the last-mentioned Act shall be read and construed as if they meant and included this Act and the Acts recited therein. (*l*)

Powers of water bailiffs, etc., for carrying out provisions of 7 & 8 Vict. c. 95. Meaning of "the said recited Act" in 7 & 8 Vict. c. 95, s. 2.

(*d*) S. 95. See *Alexander v. Rankin*, 1 F. 58.

(*e*) See 55 & 56 Vict. c. 55, ss. 401, 407, 430, and 436-439, *ante*, p. 517, *et. seq.*

(*f*) *Ante*, pp. 464, 538.

(*g*) See 55 & 56 Vict. c. 55, ss. 297, 383, 336-389, & 412, *ante*, p. 503, *et. seq.*

The Dogs Act, 1906, *ante*, p. 420, applies to Scotland.

(*h*) 55 & 56 Vict. c. 55, s. 471; 20 & 21 Vict. c. 72, s. 13.

(*i*) 40 & 41 Vict. c. 53, ss. 29, 71.

(*k*) *Ante*, pp. 424-438.

(*l*) By 7 & 8 Vict. c. 95, s. 1, if any person not having a legal right or

Sect. 27.

Constables or water bailiffs entering on lands to prevent or detect breaches of provisions of this or recited Acts not to be deemed trespassers.

Board and its officers to have access to examine dams, weirs, etc. Penalty for refusing access.

Members of board, etc., may act as constables for enforcing provisions of this Act.

Apprehension of offenders.

27. Any water bailiff, constable, watcher, or officer of the board, or any police officer, may enter and remain upon any lands in the vicinity of any river or of the sea coast during any hour of the day and night for the purpose of preventing a breach of the provisions of this or the recited Acts, or of detecting the persons guilty of any breach thereof, and no such person entering and remaining upon such lands as aforesaid shall be deemed to be a trespasser: Provided always, that the owner or occupier of such land may require such person to quit, and such person may on refusal be proceeded against as a trespasser, and shall be liable to the penalties, unless he shall prove to the satisfaction of the sheriff or justices before whom he is tried that he had reason to apprehend a breach of the law had been or was about to be committed.

28. Any member of the district board, or water bailiff, constable, watcher, or officer of the board, or any police officer, may examine any dam, weir, cruive, or fixed engine within the limits of the district, or any artificial watercourse in that district; and any owner or occupier of any such dam, weir, cruive, or fixed engine, or artificial watercourse, refusing access thereto to any such member of the board, water bailiff, constable, or officer of the board, or any police officer, shall be liable to a penalty not exceeding five pounds for each offence; and any member of the board, or water bailiff, constable, watcher, or officer of the board, or any police officer, may search all boats, nets, baskets, or bags and other instruments used in fishing for salmon, or which he may have reason to suspect may contain salmon illegally taken, and he may seize all illegal nets, or nets being used illegally, (m) and other instruments of fishing, and all fish and other articles liable to be forfeited under the provisions of this Act, and generally may act as a constable for the enforcement of the provisions of this Act, and when so acting shall be deemed to be a constable.

29. It shall be lawful for any person, without any warrant or other authority than this Act, *brevi manu* to seize and detain (n) any person who shall be found committing any offence contained in the first six sub-divisions of the fifteenth section, or in the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, and twenty-second sections of this Act, and to carry such person before any sheriff or justice of the peace or other magistrate, or to deliver such person to a constable, who is hereby required to carry such person before a justice of the peace or other magistrate, who shall forthwith examine and discharge or commit such person until caution *de judicio sisti* be found, as the case may require. (o)

permission from the proprietor of a salmon fishery . . . shall wilfully take fish for or attempt to take or aid or assist in taking fishing for or attempting to take in or from any river stream lake water estuary firth sea-lock creek bay or shore of the sea or in or upon any part of the sea within one mile of low-water mark in Scotland any salmon grilse sea-trout whiting or other fish of the salmon kind . . . it shall be lawful for any person employed in the execution of this Act to seize and detain all fish so taken and all boats tackle nets and other engines so used. By 25 & 26 Vict. c. 97, s. 26, any net rod line or other article directed to be forfeited under that Act may be seized by any constable water-bailiff watcher or other officer. See *Mauchline v. Stevenson*, 5 R. 21; *Wemyss v. Zetland*, 18 R. 126; *Neilson*, 3 Coup. 353.

(m) As to leaving nets in working order

during close time, see *Parr v. Mitchell*, 2 Wh. 434.

(n) He is not entitled to search a person who may be suspected of being guilty of illegal fishing unless he has been previously apprehended: *Jackson v. Stevenson*, 24 R. 38.

(o) The like power is conferred by 9 Geo. IV. c. 39, s. 11. The material sections of which are—

1. No salmon grilse sea-trout nor other fish of the salmon kind shall be taken in or from any river stream lake water or estuary whatsoever or any part of the sea coast between 14th September and 1st February inclusive.

3. If any person shall . . . trespass in any ground enclosed or unenclosed or in or upon any river stream watercourse or estuary with intent so to kill or take such fish he is liable to a penalty. See *Crook v. Duncan*, 1 F. 50.

15. Every person who commits any of the following offences,—

Sect. 15.

- (1.) Who fishes for, takes, or attempts to take, or aids or assists in fishing for, taking, or attempting to take, salmon during the annual close time by any means other than rod and line; (*p*)
- (2.) Who fishes for, takes, or attempts to take, or aids or assists in fishing for, taking, or attempting to take, salmon (except during Saturday or Monday by rod (*q*) and line) during the weekly close time, (*r*) or contravenes in any way any byelaw in force regarding the observance thereof;
- (3.) Who fishes for or takes, (*s*) or aids in fishing for or taking, salmon during the annual close time by means of rod and line at a period not sanctioned by the byelaws in force in the district;
- (4.) Who fishes for or aids in fishing for salmon with a net having a mesh contrary to any byelaw; (*t*)
- (5.) Who sets or uses, or aids in setting or using, a net or any other engine (*u*) for the capture of salmon when leaping at or trying to ascend any fall or other impediment, or when falling back after leaping;
- (6.) Who does any act for the purpose of preventing salmon from passing through any fish pass, or taking any salmon in its passage through the same;
- (7.) Who wilfully puts or causes to be put, or neglects to take reasonable precautions to prevent the discharge of, any sawdust, or any chaff, or any shelling of corn into any river; (*x*)
- (8.) Who in any way contravenes any byelaw;

shall for every such offence be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding two pounds for every salmon taken or killed in an illegal manner, and shall forfeit the salmon so taken; and all penalties imposed under this Act and the recited Acts, or any of them, shall be in addition to the costs and expenses of prosecution and conviction.

17. Every person that shall use any light or fire of any kind, or any spear, leister, gaff, or other like instrument, or otter, for catching salmon, or any instrument for dragging for salmon, (*y*) or have in his possession a light or any of the foresaid instruments under such circumstances as to satisfy the court before whom he is tried that he intended at the time to catch salmon by means thereof, shall be liable to a penalty not exceeding five pounds, and shall forfeit any of the foresaid instruments and any salmon found in his possession; but this section shall not apply to any person using a gaff as auxiliary to angling with a rod and line. (*z*)

(*p*) By 25 & 26 Vict. c. 97, s. 7, this time must continue 168 days. It is fixed locally by bye-law. The weekly close time except for rod and line is from 6 p.m. Saturday to 6 a.m. Monday. See also *Bathgate*, 45 J. 506.

(*q*) See *Anderson*, 6 M. 117.

(*r*) See *Greig v. Jopp*, 4 Irv. 369. It extends to 6 a.m. on Monday: *Custar v. Chalmers*, 5 R. 36.

(*s*) Held not to apply to a case where one fish was found in a stake-net: *Haydon v. Cornvick*, 5 Comp. 608.

(*t*) See *MacKenzie v. Pitcaithley*, 14 R. 19. The bye-law must be practicable: *Osborne v. Anderson*, 15 R. 12. Cf. *Middleton*, 1908, S. C. 32, and *Irving*, 19 R. 7.

(*u*) See *Phyn*, 7 F. 47, as to fishing in

the Solway Frith.

(*x*) By 25 & 26 Vict. c. 97, s. 13, this extends to any liquid or solid matter poisonous or deleterious to salmon to an extent injurious to any salmon fishery—but the section does not apply to what is done under a legal right. Extended to dynamite or other explosive substance used or attempted to be used to catch or destroy fish in any river water or loch: 40 & 41 Vict. c. 65, s. 2; 2 Ed. VII. c. 29, s. 3.

(*y*) A toot and haul net or a hang or drift net is an illegal instrument: *Wedderburn v. Atholl*, 1900, A. C. 403.

(*z*) By 25 & 26 Vict. c. 97, s. 27, if three or more persons acting in concert or being together in company shall at any time between the expiration of the first hour

Penalties for offences.

Penalties for using lights, etc.

Sect. 18.

Penalties for
nsing, buying,
selling, or pos-
sessing roe,
except for
purposes of
artificial
propagation
or science.

Penalties for
destroying the
young of
salmon, or
disturbing
spawning beds,
except for
purposes of
artificial
propagation
or science, or
cleaning dams,
etc.

Proviso.

Penalties for
taking unclean
salmon, except
for artificial
propagation,
etc.

Penalty for
buying, selling,
or possessing
salmon in close
time.

18. Every person that shall use any fish roe for the purpose of fishing, and every person that shall buy, sell, or expose for sale, or have in his possession, any salmon roe, shall for every such offence be liable to a penalty not exceeding two pounds, and shall forfeit all salmon roe (a) found in his possession; but this section shall not apply to any person who uses or has in his possession salmon roe for artificial propagation or scientific purposes, or gives any reason satisfactory to the court by whom he is tried for having the same in his possession.

19. Every person who shall wilfully take or destroy any smolt or salmon fry, (b) or shall buy, sell, or expose for sale, or have in his possession, the same, or shall place any device or engine for the purpose of obstructing the passage of the same, or shall wilfully injure the same, or shall wilfully injure or disturb any salmon spawn, or disturb any spawning bed, or any bank or shallow in which the spawn of salmon may be, or during the annual close time shall obstruct or impede salmon in their passage to any such bed, bank, or shallow, shall be liable to a penalty not exceeding five pounds for every such offence, and shall forfeit every rod, line, net, device, or engine used in committing any such offence, and shall forfeit any smolt or salmon fry that may be found in his possession; but nothing herein contained shall apply to acts done for the purpose of artificial propagation of salmon or other scientific purpose, or in the course of cleaning or repairing any dam or mill-lade, or in the course of the exercise of rights of property in the bed of any river or stream: Provided also, that the district board may, with the consent of all the proprietors of salmon fisheries in any river or estuary, adopt such means as they think fit for preventing the ingress of salmon into narrow streams in which they or the spawning beds are from the nature of the channel liable to be destroyed, but always so that no water rights used or enjoyed for the purposes of manufactures, or agricultural purposes or drainage, shall be interfered with thereby.

20. Every person who shall wilfully take, fish for, or attempt to take, or aid or assist in taking, fishing for, or attempting to take, any unclean or unseasonable salmon, or who shall buy, sell, or expose for sale, or have in his possession, any unclean or unseasonable salmon, shall be liable to a penalty not exceeding five pounds in respect of each such fish taken, sold, or exposed for sale, or in his possession, and shall forfeit every such fish; but this section shall not apply to any person who takes such fish accidentally, and forthwith returns the same to the water with the least possible injury, or any person who takes or is in possession of such fish for artificial propagation or scientific purposes.

21. Any person who shall buy, sell, or expose for sale, or have in his possession, any salmon taken within the limits of this Act between the commencement of the latest and the termination of the earliest annual close time (c) which is in force at the time for any district, (d) shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding two pounds for every salmon

after sunset and the beginning of the last hour before sunrise enter or be found upon any ground adjacent or near to any river or estuary or the sea or in or upon any river or estuary or the sea with intent illegally to take or kill salmon or having in his or their possession any net rod spear light or other instrument used for taking salmon with such intent as aforesaid or shall illegally take or kill or attempt to take or kill or aid or assist in killing or taking salmon . . . he or they are liable to a penalty.

(a) *Mauchline v. Stevenson*, 5 R. 21.

The section applies generally to all districts: *Crook v. Duncan*, 1 F. 50.

(b) Includes parr: *Blair v. Miller*, 9 M. 58.

(c) This means the period during which net-fishing for salmon is prohibited: *Chalmers v. Bain*, 16 R. 77, not the period during which fishing by rod and line is also prohibited.

(d) This only applies while the rivers are closed: *Wilson v. Harvey*, 12 R. 12; i.e. *semble* any river from which the Scottish market might be supplied: *Chalmers v. MacGlashan*, 13 R. 17.

so bought, sold, or exposed for sale, or in his possession; and any salmon so bought, sold, or exposed for sale, or in his possession, shall be forfeited; and the burden of proving that any such salmon was caught beyond the limits of this Act shall lie on the person selling or exposing the same for sale, or having the same in his possession.

22. All salmon intended for exportation shall be entered for that purpose with the proper officer of Customs at the port or place of intended exportation before shipment thereof; and any salmon shipped or exported or brought to any wharf, quay, or other place for exportation (e) between the commencement of the latest and the termination of the earliest annual close time for any district in Scotland contrary to this section shall be forfeited, unless proof be given to the satisfaction of the Commissioners of Customs of the salmon having been legally captured, and the person so illegally shipping or exporting or bringing the same for exportation shall be liable to a penalty not exceeding two pounds for every salmon so shipped or exported or brought for exportation; and no salmon caught by rod and line during the annual close time for net-fishing shall be shipped, exported, or brought for exportation under the like penalties; and any officer of Customs may during the aforesaid period open any parcel entered or intended for exportation, or brought to any quay, wharf, or place for that purpose, and suspected by him to contain salmon, and may detain any salmon found in such parcel until proof is given to the satisfaction of the Commissioners of Customs of the salmon being such as may be legally exported; and if the salmon before such proof is given become unfit for human food, the officer of Customs may destroy the same. (f)

Provisions as to exportation of salmon.

23. The proprietor or occupier of any fishery shall within thirty-six hours after the commencement of the annual close time remove and carry from such fishery, and from the landing places and grounds adjacent thereto, all boats, oars, nets, engines, and other tackle used or employed by such occupier in taking salmon, and effectually secure the same so as to prevent their being used in fishing until the end of the close time, with the exception of such boats and oars as may be used for angling; and the proprietor or occupier of any cruive shall within thirty-six hours after the commencement of the annual close time remove and carry away all the hecks, rails, and inscales, and effectually secure the same so as to prevent their being used in fishing, and shall also remove all planks and temporary fixtures and other obstructions to the free passage of fish through the cruive; and any proprietor or occupier who neglects to remove and carry away and effectually secure in manner aforesaid any boat, oar, net, engine, or other tackle, or any heck, rail, or inscale, or any obstruction to the passage of salmon through a cruive, shall forfeit every engine and thing not removed and carried away in compliance with the terms of this section, and for every day during which he suffers any such engine or thing to remain unremoved beyond the period prescribed in this Act he shall be liable to a penalty not exceeding ten pounds: Provided always, that nothing herein contained shall apply to any ferry boat, or prevent any proprietor of lands from continuing any boat for the use of himself or of his family, if such boat shall have the name of the proprietor painted thereon, and be secured, when not in use for lawful purposes, by lock and key.

All boats and other engines to be removed during annual close time.

24. The proprietor, or when let the occupier, of every fishery at which stake, weir, or stake nets, fly nets, or bag nets (g) are used, shall in regard to such nets

Penalties on proprietor or occupier for breach of weekly close time.

(e) This does not include an inland railway station: *Adams v. Cadenhead*, 16 L. 51.

(f) See *ante*, p. 109.

(g) Where they could not be removed on Saturday for storm but were removed

Sect. 24. do all acts required by any byelaw in force within the district in which such fishery is situated for the due observance of the weekly close time; and if any such proprietor or occupier shall omit to do any act so required he shall incur the following penalties, that is to say—

1. He shall forfeit the net or nets with regard to which such omission has occurred: (*h*)

Freshwater fish.

As to freshwater fish, by 8 & 9 Vict. c. 26 (The Trout (Scotland) Act, 1845)—

Arrest of offenders.

4. It shall be lawful for any person without any warrant or other authority than this Act *brevi manu* to seize and detain any person who shall be found committing any offence against this Act . . . and to deliver such person to a constable who is hereby required to carry such person before a sheriff or justice. (*i*)

Net fishing.

1. It shall not be lawful for any person whatsoever not being the proprietor of the land through or by which any river (*k*) or water flows or on which any loch is wholly or partially situate or not having a right there to fish for trout or freshwater fish or not having a written permission from some such proprietor or person entitled to fish as aforesaid . . . to fish for trout or other freshwater fish in any such river water or loch in Scotland with any net of any kind or description. . . .

Trespassing with intent.

2. If any person shall trespass upon any ground enclosed or unenclosed or in or upon any river water or loch with intent to take with any net any trout or other freshwater fish. (*l*)

By 23 & 24 Vict. c. 45 (The Trout (Scotland) Act, 1860)—

Seizure of boats, nets, etc.

3. It shall be lawful for any person having the authority of the proprietor of the land through or past which a river or water flows or upon which a loch is wholly or partially situated to seize and detain any boat or net of any description double rod cross line set line or otter or materials for burning the water or instruments for striking the fish or for pointing or lime or other substance destructive to trout or other freshwater fish used or intended to be used in the commission of any such (*m*) offence and also any fish taken by any such offender.

Net fishing, set lines, etc.

1. It shall not be lawful for any person whatsoever (except as hereinafter provided) . . . to fish for trout or other freshwater fish in any river water or loch with any net of any kind or description or by what is known as double rod fishing or cross line fishing or set lines or otter fishing or burning the water or by striking the fish with any instrument or by pointing or to put into the water lime or any other substance destructive to trout (*n*) or other freshwater fish with intent to destroy the same and if any person shall wilfully take fish for or

early on Monday an offence was committed: *Middleton*, 1908, S. C. 32; see *Macrorie*, 8 F. 23.

(*h*) Held to apply to a case of replacing bag-nets before expiry of the weekly close time: *Cooper v. Tough*, 2 Coup. 547. Negligence of a servant is no defence: *Don v. Johnston*, 25 R. 34.

(*i*) See *Roger v. Hislop*, 6 R. 16; *Richmond v. Dempster*, 4 Irv. 10.

(*k*) By s. 10, river etc. includes any stream burn millpool mill-lead milldam sluice pond cut canal and aqueduct and

every other collection or run of water in which trouts and other freshwater fish breed haunt or are found or preserved.

(*l*) By s. 3, if any such trespasser shall have in his possession any net of any description whereby trout or other freshwater fish may be taken or killed the possession thereof shall be held to be sufficient evidence of intent of such trespasser to commit such offence.

(*m*) *Infra*.

(*n*) This does not include gelatine: *Tennant v. Clark*, 4 F. 24.

attempt to take or aid or assist in taking or fishing for or attempting to take or fish for in or from any such river etc. [he is liable to a penalty]. Provided that this is not to prevent any person having the right to fish in any river etc. or any person having permission from such person or exercising the right of fishing in such river etc. [by net where such fishing is prosecuted for scientific breeding or restocking purposes]. (o) Sect. 1.
Proviso for
breeding or
restocking.

2. If any person shall trespass upon any ground enclosed or unenclosed or in or upon any river etc. with intent to take any trout or other freshwater fish with any net double rod cross line set line or otter or by burning the water or striking the fish with any instrument or by pointing or to destroy the fish by putting lime or other substance destructive to trout or other freshwater fish into the water [he is liable to a penalty]. (p) Trespassing
with intent.

By 2 Edw. VII. c. 29 (The Freshwater Fisheries (Scotland) Act, 1902)—

1. Between 15th October and 28th February both inclusive there shall be an annual close time for trout in Scotland during which it shall not be lawful except as hereinafter specified for any person to Close time for
trout.

(a.) Fish for or take any trout (*salmo fario*) in any river water or loch in Scotland by net rod line or otherwise or (b.) have possession of common trout or (c.) expose common trout for sale. Restrictions
during.

Except as hereinafter provided the provisions of this section shall not apply to the owner occupier or lessee of any water where trout are kept in captivity or artificially reared and fed or to any person employed by them for the rearing or feeding of trout or to any person to whom such trout may be consigned by them for sale or otherwise for the purpose of stocking ponds rivers or other waters. But any owner lessee occupier or person as aforesaid who shall during the close time created by this Act

(a.) take from such water common trout except for scientific or breeding purposes or for the purpose of such trout being removed in a living state to other rivers waters or lochs (b.) sell or expose for sale dead common trout or (c.) sell or expose for sale live common trout for the purposes of food

shall be deemed to have committed an offence under this section.

5. [This Act to be construed as one with 8 & 9 Vict. c. 26 and 23 & 24 Vict. c. 45.]

POOR INSPECTOR

By 25 & 26 Vict. c. 54, s. 4, the reception of pauper lunatics in workhouses is provided for. *Poor Inspector.*

(o) 2 Ed. VII. c. 29, s. 2.

(p) By s. 11 the act is not to extend to

the killing of trout or freshwater fish with a single rod and line.

Ireland.

III. IRELAND

Warrants and
Orders.

1. WARRANTS AND ORDERS

Of Superior
Courts at Com-
mon Law.

1. OF SUPERIOR COURTS AT COMMON LAW

THE powers here so far as regards the Sheriff, Gaoler and Admiralty
、 Marshal are practically the same as in England. (a) The differ-
ences are there pointed out.

Other than
those of Su-
perior Courts
at Common
Law.

2. OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW

Sheriff.

THE SHERIFF

Committal.

Committal.—Warrants of committal in the County Court fall
in this class when they issue by way of process and not punish-
ment. (b)

Execution on
Goods.
Time.
Priority.

Execution on Goods.—Civil bill decrees on goods can only be
executed between sunrise and sunset. (c) Priority of writs of
Superior and County Courts is determined by the time of lodg-
ment at the under-sheriff's office. (d)

What may not
be taken.

The officer cannot seize nor take in execution under this
process or warrant of a justice any growing crops, trees, shrubs,
plants or vegetables which are not severed from the land. (e)
Nor terms of years nor any estate or interest in land. (f) Nor
wearing apparel and bedding to the value of £5. (g) The Friendly
Societies Act applies. (h)

Sale.

A civil bill decree is an execution within 9 Anne. (i)
Generally no sale is to take place until the end of three days
following that on which execution is taken unless the goods are
perishable, or upon request of the defendant, and proper persons

(a) See *ante*, pp. 223–240.

(b) *Ante*, p. 233.

(c) 14 & 15 Vict. c. 57, s. 148.

(d) 27 & 28 Vict. c. 99, s. 24.

(e) 26 & 27 Vict. c. 62, s. 2.

(f) 27 & 28 Vict. c. 99, s. 29.

(g) 14 & 15 Vict. c. 57, s. 125.

(h) *Ante*, p. 232.

(i) *Ante*, p. 234.

are to be appointed for keeping possession. (*k*) The under-sheriff or bailiff may sell without an auctioneer. (*l*)

Possession.—No writ is to be executed on Christmas Day or Good Friday, nor after the commencement of two hours next before sunset and before sunrise and 6 o'clock, whichever shall be latest. (*m*) *Possession.*

Possession may be delivered without the removal of under-tenants or occupiers. (*n*)

Replevin.—This still exists in Superior and County Courts. (*o*) *Replevin.*
On proper security by the claimant the officer may, if the goods are not given up on demand, break open the outer or inner doors for the purpose of delivering them to the claimant. (*p*)

CONSTABLES

The powers of these officers are practically as in England. (*q*) *Constables.*

The Explosives, Petroleum and Returning Officers Acts apply. (*r*) *Explosives, etc.*
The corresponding enactments relating to lunatics is 38 & 39 Vict. c. 67, s. 4; and revising barristers, 13 & 14 Vict. c. 69, s. 57.

As to recovery of tenements, warrants are not to be executed on Sunday, Good Friday or Christmas day, nor except between 9 a.m. and 4 p.m. (*s*)

They may be required to assist in the execution of civil bill decrees. (*t*)

WEIGHTS : EXPLOSIVES

These Acts apply. (*u*)

Weights: Explosives.

GAOLERS

The powers of these officers are prescribed by rules. (*x*)

Gaolers.

RATE COLLECTOR

Rate Collector.

The powers of collectors of county cess are regulated by 6 & 7 Will. IV. c. 116, s. 152, and 13 & 14 Vict. c. 82. And these

(*k*) 27 & 28 Vict. c. 99, s. 28. (As to attachment of goods in local courts, see 13 & 14 Vict. c. 73, s. 9.)

(*l*) Ss. 27, 30.

(*m*) 11 & 12 Vict. c. 47, s. 1; 27 & 28 Vict. c. 99, s. 19.

(*n*) 9 & 10 Vict. c. 111, s. 8; 23 & 24 Vict. c. 154, ss. 94, 96. As to compensation for improvements, see Town Tenants Act, 1906 (6 Ed. VII. c. 54).

(*o*) 16 & 17 Vict. c. 113, s. 229.

(*p*) 14 & 15 Vict. c. 57, s. 43 *et seq.*,

and see *ante*, p. 244.

(*q*) *Ante*, pp. 244-247. But see as to constabulary, *Moriarty v. Blake*, 1 Law Rec. O. S. 343.

(*r*) *Ante*, pp. 245, 247.

(*s*) 14 & 15 Vict. c. 92, s. 15; 34 & 35 Vict. c. 76, s. 10; 23 & 24 Vict. c. 154, ss. 84-86. See *Blue v. Fullerton*, 1 R. 10 C. L. 233.

(*t*) 27 & 28 Vict. c. 99, s. 23.

(*u*) *Ante*, pp. 247, 250.

(*x*) 40 & 41 Vict. c. 49, s. 47.

officers collect the poor rates in the same manner. (y) They may levy by distress and sale any goods found on the premises (except such as are exempt from distress for rent), rendering the overplus to the owner after deducting expenses not exceeding 1s. in the £. (z) On bankruptcy they are entitled to preferential payment. (a)

Water Bailiffs.

WATER BAILIFFS

The justices may grant a warrant to these officers to enter suspected places at any time of the day or night mentioned therein. It is not to continue in force more than a week. (b)

The Fisheries Board may by warrant enforce the construction of weirs dams dykes cribs or boxes in conformity with the provisions of the Fisheries Act, 1842. (c) They need do no more than open passages and shall not be liable for consequential damage. (d) They may also cause natural obstructions in rivers to be removed, (e) and by warrant suspend the use of and remove illegal weirs and nets in places prohibited. (f)

Orders of Local Authorities.

3. ORDERS OF LOCAL AUTHORITIES

*Local Acts ;
Bye-laws.*

Local Acts and Byelaws are the same in effect as in England. (g)

Highways.

Highways.—The maintenance and repair of roads is now vested in the local authority. (h)

Power to get materials ;

Every county surveyor and every contractor for any work to be executed shall have power and authority to dig for and carry away (i) in or out of any lands not being a deer-park bleach-green orchard (k) walled garden haggard or yard or planted walk lawn or avenue to a mansion-house any gravel stones sand or other materials whether the same be found in the same or any adjoining county which may be wanted for the building rebuilding enlarging or repairing

(y) 1 & 2 Vict. c. 56, s. 73 ; 25 & 26 Vict. c. 83, s. 13 ; 61 & 62 Vict. c. 37, s. 27. See *Clay v. Governors of Lying-in Hospital*, 1 R. 6 C. L. 105.

(z) 6 & 7 Will. IV. c. 116, s. 152 ; 13 & 14 Vict. c. 82.

(a) 35 & 36 Vict. c. 58, s. 49.

(b) 5 & 6 Vict. c. 106, s. 65.

(c) S. 59.

(d) S. 60.

(e) S. 62.

(f) 8 & 9 Vict. c. 108, s. 3.

(g) *Ante*, p. 252.

(h) 61 & 62 Vict. c. 37, ss. 8, 27. The local authority is not liable at common law in an action for damages for injury caused by negligent omission to repair a highway, nor is that immunity altered by

this Act: *Harbinson v. Armagh*, 1902, 2 I. R. 538. As to liability for damage caused by steam rollers to gas-pipes, see *Alliance Co. v. Dublin*, 1901, 1 I. R. 492.

(i) By 61 & 62 Vict. c. 37, s. 12 (2) this section shall extend to authorize the digging for raising and carrying away of gravel stones sand or other materials out of any river or brook at a distance of at least 150 feet above or below any bridge dam or weir where the same can be taken away without diverting or interrupting the course of the river or brook or prejudicing or damaging any building highway ford or spawning-bed. As to the power to stop up useless roads, see s. 82.

(k) *R. v. Queen's Co.*, 1908, 2 I. R. 285.

of any bridge arch gullet pipe or wall or for the making repairing or preserving of any road or footpath; and such surveyor or contractor is hereby further empowered to make drains in order to carry off water which might injure any bridge gullet arch pipe wall or road in or through any lands not being a deer-park, etc. [provision for compensation]. Provided nevertheless that it shall not be lawful for any such contractor or surveyor to enter any lands for any such purpose against the will of the occupiers thereof without the previous order of a justice. (l)

Sect. 162.

make drains, etc.

Consent of occupier.

Public Health.—By 41 & 42 Vict. c. 52 (The Public Health (Ireland) Act, 1878)—

2. In this Act if not inconsistent with the context the following terms have the meanings hereinafter respectively assigned to them—

“Boro” means any place for the time being subject to the Act 3 & 4 Vict. c. 108, and any Act amending the same.

“Person” includes any body of persons whether corporate or unincorporate.

“Sanitary authority” means urban sanitary authority or rural sanitary authority as by this Act defined as the case may be. (m)

“Lands and premises” include messuages buildings lands easements and hereditaments of any tenure. (n)

“Owner” means the person for the time being receiving the rack-rent of the lands or premises (n) in connexion with which the word is used whether on his own account or as agent or trustee for any other person or who would so receive the same if such lands or premises were let at a rack-rent.

“Street” includes any highway and any public bridge and any road lane footway square court alley or passage whether a thoroughfare or not.

“House” includes schools, and also factories and other buildings in which persons are employed, whatever their number may be:

“Drain” means any drain of and used for the drainage of one building only or of premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed:

“Sewer” includes sewers (o) and drains of every description, except drains to which the word “drain” interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a sanitary authority under this Act:

“Slaughter-house” includes the buildings and places commonly called slaughter-houses and knackers’ yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale:

“Common lodging-house” means a house in which or in any part of which persons are harboured or lodged for hire for a single night, or for less than a week at a time: (p)

“Water company” means any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit:

(l) 6 & 7 Will. IV. c. 116, s. 162, applies to urban district councils: *R. v. Cavan*, 1907, 2 I. R. 389, and see *R. v. Monaghan*, 1908, 2 I. R. 1. See as to Dublin county, 7 & 8 Vict. c. 106, s. 36.

(m) See 7 Ed. VII. c. 53, s. 13, *ante*.

(n) *Bowen v. James*, 10 L. R. Ir. 26.

(o) A drain within the district con-

structed originally by the road authority merely to carry off surface water if allowed to be used for the drainage of buildings within the district becomes a sewer: *Rathmines v. Rathgar*, 1899, 1 I. R. 157.

(p) See 14 & 15 Vict. c. 28, s. 12; and 16 & 17 Vict. c. 41, s. 7, *ante*, pp. 366, 368, which apply to Ireland.

Sect. 2.

“Waterworks” includes streams springs wells pumps reservoirs cisterns tanks aqueducts cuts sluices mains pipes culverts engines, and all machinery, lauds, buildings, and things for supplying or used for supplying water, also the stock in trade of any water company :

“Labouring Classes’ Lodging Houses Acts” means 29 & 30 Vict. c. 44 (Labouring Classes’ Lodging Houses and Dwellings Act (Ireland), 1866); 30 & 31 Vict. c. 28 (Labouring Classes’ Dwelling Houses Act, 1867) (q)

“Artizans’ and Labourers’ Dwellings Act” means 31 & 32 Vict. c. 130 (Artizans’ and Labourers’ Dwellings Act, 1868) : (q)

“Bakehouse Regulation Act” means 26 & 27 Vict. c. 40 (Bakehouse Regulation Act, 1863) : (r)

“Diseases Prevention Act” means 18 & 19 Vict. c. 116 (Diseases Prevention Act, 1855) as amended by 23 & 24 Vict. c. 77 (An Act to amend the Acts for the removal of nuisances and the prevention of diseases), as the same are amended and extended to Ireland by the Sanitary Act, 1866 : (s)

“Baths and Wash-houses Acts” means 9 & 10 Vict. c. 87 (An Act for promoting the voluntary establishment in boroughs and certain towns in Ireland of public baths and wash-houses) :

“Sanitary Acts” means all the above-mentioned Acts and the Acts mentioned in the Schedule A. to this Act annexed, (t) except the Burial Grounds Acts as herein-after defined, and includes any amendments of such Acts contained in this or any other Act ; and, with respect to any urban sanitary district, includes any Act, local Act, or provisional order relating to the same subject matters as the above-mentioned Acts in force within such district :

“Sanitary purposes” means any objects or purposes of the Sanitary Acts :

“Burial Grounds Acts” means the Burial Grounds (Ireland) Act, 1856, as the same is amended by the 23 & 24 Vict. c. 76 : . . .

PART I

SANITARY AUTHORITIES

Powers and duties of urban authorities. 8. Every urban authority shall within their district (to the exclusion of any other authority) have, exercise, and be subject to all the powers rights duties capacities liabilities and obligations exercisable by or attaching to an urban authority under this Act, and in addition thereto shall within their district (to the exclusion of any other authority) have, exercise, and be subject to all the powers rights duties capacities liabilities and obligations within such district exercisable or attaching by and to the local authority under the Bakehouse Regulation Act and the Artizans’ and Labourers’ Dwellings Act, or any Acts amending the same.

Where the Baths and Wash-houses Acts and the Labouring Classes’ Lodging Houses Acts, or any of them, are in force within the district of any urban authority, such authority shall have all powers rights duties capacities liabilities and obligations in relation to such Acts exercisable by or attaching to commissioners or persons acting in the execution of the said Acts, or any of them.

Where the Baths and Wash-houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts ; and where the

(q) See now 53 & 54 Vict. c. 70.

(r) See now 1 Ed. VII. c. 22.

(s) Repealed by this Act.

(t) Repealed by this Act, except 17 & 18 Vict. c. 103, *post*.

Labouring Classes' Lodging Houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts. Sect. 8.

Where any local Act other than an Act for the conservancy of any river is in force within the district of an urban authority, conferring on any commissioners trustees or other persons powers for purposes the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers rights duties capacities liabilities and obligations of such commissioners trustees or other persons, in relation to such purposes, shall be transferred and attach to the said urban authority.

9. Every rural authority shall within their district (to the exclusion of any other authority) have, exercise, and be subject to all the powers rights duties capacities liabilities and obligations exercisable by or attaching to a rural authority under this Act, and in addition thereto shall within their district (to the exclusion of any other authority) have, exercise, and be subject to all the powers rights duties capacities liabilities and obligations within such district exercisable by or attached to the local authority under the Bakehouse Regulation Act, or any Acts amending the same. Powers and duties of rural authorities.

10. From and after the passing of this Act all such property real and personal including all interests rights and easements in, to, and out of property real and personal (including things in action), as belongs to or is vested in any sanitary authority as the sanitary authority of any district under the Sanitary Acts, shall continue vested in such authority, subject to all debts liabilities and obligations affecting the same property. Vesting of property in sanitary authorities.

All such property of a sanitary authority shall be held by such authority upon trust for the district or several places respectively within its jurisdiction for the purposes of this Act. (u)

PART II

SANITARY PROVISIONS (x)

SEWERAGE AND DRAINAGE

Regulations as to Sewers and Drains

16. All existing and future sewers within the district of a sanitary authority, together with all buildings, works, materials, and things belonging thereto, Sewers vested in sanitary authority.
Except

- (1.) Sewers made by any person for his own profit, or by any company for the profit of the shareholders; and
- (2.) Sewers made and used for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land; and
- (3.) Sewers under the authority of any commissioners of sewers appointed by the Crown,

shall vest in and be under the control of such sanitary authority:

Provided, that sewers within the district of a sanitary authority which have been or which may hereafter be constructed by or transferred to some other sanitary authority, or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers, shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same or to whom the same have been transferred.

(u) As to museums, etc., see 54 & 55 Vict. c. 22, and 1 Ed. VII. c. 19, *ante*, p. 303.

(x) See 7 Ed. VII. c. 53, Part III., *ante*, p. 319.

Sect. 17.

Maintenance
and making
of sewers.

Powers for
making sewers.

Sewage to be
purified before
being dis-
charged into
streams.

Alteration and
discontinuance
of sewers.

Cleansing
sewers.

Map of system
of sewerage.

Power of
owners and
occupiers
within district
to drain into
sewers of sani-
tary authority.

17. Every sanitary authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act.

18. Any sanitary authority may carry any sewer through, across, or under any road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier into, through, or under any lands whatsoever within their district. (y)

They may also (subject to the provisions of this Act relating to sewage works without the district of the sanitary authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

19. Nothing in this Act shall authorize any sanitary authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal, pond, or lake (z) until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse, or in such canal pond or lake.

20. Any sanitary authority may from time to time enlarge, lessen, alter the course of, cover in, or otherwise improve any sewer belonging to them, and may discontinue, close up, or destroy any such sewer that has in their opinion become unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided, that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance.

21. Every sanitary authority shall cause the sewers belonging to them to be constructed, covered, ventilated, and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.

22. Every urban sanitary authority shall, and any rural sanitary authority may, if they think fit, provide a map exhibiting the system of sewerage, if any, in their district; and such map shall be kept at their office, and shall be revised from time to time, and shall at all reasonable times be open to the inspection of the ratepayers of their district.

23. The owner or occupier of any premises within the district of a sanitary authority shall be entitled to cause his drains to empty into the sewers of that authority (a) on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications.

Any person causing a drain to empty into a sewer of a sanitary authority without complying with the provisions of this section shall be liable to a penalty not exceeding twenty pounds, and the sanitary authority may close any

(y) The owner is entitled to an injunction for improperly carrying sewage through his lands: *Gibbings v. Hungerford*, 1904, 1 I. R. 211.

(z) There can be no prescriptive right to pollute a stream by the discharge of sewage and even if such a right can be required it must be restricted to the limits when the period of prescription commenced; if it is not possible to separate the legal

from the illegal user that may be ground for total prohibition: *Blackburne v. Somers*, 5 L. R. Ir. 1; *Traill v. McAlister*, 25, ib. 524. Steps ought to be taken on occasion arises from time to time to prevent inconvenience or injury to others from works done under statutory authority: *Geddis v. Pann*, 3 A. C. 430; *Bligh v. Rathangan*, 1898, 2 I. R. 205.

(a) *Molloy v. Gray*, 24 L. R. Ir. 258.

communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section. Sect. 23.

24. The owner or occupier of any premises without the district of a sanitary authority may cause any sewer or drain from such premises to communicate with any sewer of a sanitary authority on such terms and conditions as may be agreed on between such owner or occupier and such sanitary authority, or as in case of dispute, may be settled, at the option of the owner or occupier, by a court of summary jurisdiction or by arbitration in manner provided by this Act. Use of sewers by owners and occupiers without district.

25. Where any house within the district of a sanitary authority is without a drain sufficient for effectual drainage, the sanitary authority may by written notice require the owner or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the sanitary authority are entitled to use, and which is not more than one hundred feet from the site of such house; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the sanitary authority direct; and the sanitary authority may require any such drain or drains, cesspool or cesspools, to be of such materials and size, and to be so ventilated, and to be laid at such level, and with such fall as may appear to them to be necessary: Provided that where, in the opinion of the sanitary authority, greater expense would be incurred in the construction of such cesspool or cesspools than in the making of a drain emptying into a sewer which they are entitled to use, the sanitary authority may require the owner or occupier to make such drain, notwithstanding that the sewer into which it is to empty is not within one hundred feet of the site of the house. Power of sanitary authority to enforce drainage of undrained houses. (b)

If such notice is not complied with, the sanitary authority may, after the expiration of the time specified in the notice, do the work required, and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses.

Provided that where, in the opinion of the sanitary authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the sanitary authority may construct such new sewer, and require the owners or occupiers of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or may by order declare the same to be private improvement expenses.

26. Where any house within the district of a sanitary authority has a drain communicating with any sewer, which drain, though sufficient for the effectual drainage of the house, is not adapted to the general sewerage system of the district, or is in the opinion of the sanitary authority otherwise objectionable, the sanitary authority may, on condition of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose; and the expense of those works, and of the construction of the drain or drains provided by them, under this section, shall be deemed to be expenses properly incurred by them in the execution of this Act. Power of sanitary authority to require houses to be drained into new sewers.

(b) And see 7 Ed. VII. c. 53, s. 39, *ante*, p. 319.

Sect. 27.

Penalty on
building house
without drains
in urban
district.

27. It shall not be lawful in any urban district newly to erect any house or to build any house which has been pulled down to or below the first floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, in such manner, and at such level, and with such fall as may appear to the urban authority to be necessary for the effectual drainage of such house; and the drain or drains so to be constructed shall empty into some sewer which the urban authority are entitled to use, and which is within one hundred feet of some part of the site of the house to be built or rebuilt; but if no such means of drainage are within that distance, then shall empty into such properly constructed cesspool or other place, not being under any house, as the urban authority direct: Provided always, that the sanitary authority may, at the request of the owner of the house, permit such drain or drains to be disconnected from the interior of the house in such manner as it may think proper.

Any person who causes any house to be erected or rebuilt or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding fifty pounds.

Power to com-
pel paving,
etc., of private
streets.

28. Where any street within any urban district (not being for such purposes in charge of the sanitary authority, or of any grand jury, or other public body), or the carriageway, footway, or any other part of such street is not sewered metalled paved flagged channelled and made good, or is not lighted to the satisfaction of the urban authority, such authority may by notice addressed to the respective owners or occupiers of the premises fronting, adjoining, or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good, or to provide proper means for lighting the same within a time to be specified in such notice.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor or other duly appointed officer, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and in case of a sewer showing the depth of such sewer below the surface of the ground; such plans, sections, and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice, and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein, and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act, or the urban authority may by order declare the expenses so incurred to be private improvement expenses.

The same proceedings may be taken and the same powers may be exercised in respect of any such street or road of which a part is or may be a public foot-path, under charge of the sanitary authority, or grand jury, or other public body, as fully as if the whole of such street or road was a highway not in charge of the sanitary authority, or grand jury, or other public body.

29. Any person who in any urban district, without the written consent of the urban authority,— **Sect. 29.**

(1.) Causes any building to be newly erected over any sewer of the urban authority; or

(2.) Causes any vault, arch, or cellar to be newly built or constructed under the carriageway of any street,

shall forfeit to the urban authority the sum of five pounds and a further sum of forty shillings for every day during which the offence is continued after a written notice in this behalf from the urban authority; and the urban authority may cause any building, vault, arch, or cellar, erected or constructed in contravention of this section to be altered, pulled down, or otherwise dealt with as they may think fit, and may recover in a summary manner any expenses incurred by them in so doing from the offender.

Penalty on unauthorized building over sewers and under streets in urban district.

35. [Notice to be given before commencing sewage works without district.]

36. [In case of objection, works not to be commenced without sanction of Local Government Board.]

Regulation of Buildings (c)

39. When any house or building situated in any street in an urban district, or the front thereof, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith. **Power to regulate line of buildings.**

The urban authority shall pay or tender compensation to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act.

40. It shall not be lawful in any urban district, without the written consent of the urban authority, to bring forward any house or building forming part of any street, or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same. **Buildings not to be brought forward.**

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority. (*d*)

42. Where a notice, plan, or description of any work is required by any byelaws made by a sanitary authority to be laid before that authority, the sanitary authority shall, within one month after the same has been delivered or sent to their clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any byelaw of the sanitary authority, the sanitary authority may cause so much of the work as has been executed to be pulled down or removed. **As to commencement of works and removal of works made contrary to byelaws.**

Where a sanitary authority incur expenses in or about the removal of any work executed contrary to any byelaw, such authority may recover in a summary

(c) See 7 Ed. VII. c. 53, Part II., *ante*, p. 315.

(d) By s. 41 the provisions of ss. 39 and 40 shall not apply to buildings belonging

to any railway company and used for the purpose of such railway under any Act of Parliament.

Sect. 42. manner the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion.

Where a sanitary authority may under this section pull down or remove any work begun or executed in contravention of any byelaw, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any byelaw to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the byelaw shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the byelaw was broken. (e)

What to be
deemed a new
building.

43. For the purposes of this Act the re-erection of any building pulled down to or below the ground floor, or of any frame building of which only the frame-work is left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building; and whenever any old building has been taken down to an extent exceeding one half of such building, such half to be measured in cubic feet, the rebuilding thereof shall be considered the erection of a new building.

Privies, Waterclosets, etc.

44. [Penalty on building houses without privy accommodation.]

Power of sani-
tary authority
to enforce pro-
vision of privy
accommoda-
tion for houses.

45. If a house within the district of a sanitary authority appears to such authority to be without sufficient watercloset earthcloset or privy accommodation, and a properly constructed ashpit, the sanitary authority shall, by written notice, require the owner or occupier of the house, within a reasonable time therein specified, to provide sufficient watercloset earthcloset or privy accommodation, and an ashpit constructed as aforesaid, or either of them, as the case may require.

If such notice is not complied with, the sanitary authority may, at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses: Provided, that where a watercloset earthcloset or privy has been and is used in common by the inmates of two or more houses, or if in the opinion of the sanitary authority a watercloset earthcloset or privy may be so used, they need not require the same to be provided for each house.

As to earth-
closets.

46. Any enactment in force within the district of any sanitary authority requiring the construction of a watercloset shall be deemed to be satisfied by the construction, with the approval of the sanitary authority, of an earthcloset.

Any sanitary authority may, as respects any house in which any earthcloset is in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to any watercloset in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water.

Any sanitary authority may themselves undertake, or contract with any person to undertake, a supply of dry earth or other deodorizing substance to any house within their district for the purpose of any earthcloset.

In this Act the term "earthcloset" includes any place for the reception and

(e) See also 10 & 11 Vict. c. 34, ss. 75, 77.

deodorization of fœcal matter constructed to the satisfaction of the sanitary authority. Sect. 46.

47. When on the representation of the sanitary authority of any district it shall appear to the satisfaction of the Local Government Board that in such district, or in any part thereof to be defined by the Local Government Board, a system has been established and is effectually carried out by which house refuse and fœcal matter is removed at short and regular intervals, and in such a manner as not to be a nuisance or injurious to health, or that no avoidable nuisance injurious to health or offensive to public decency exists in such district or part of such district, the Board may by order declare that the enactments with respect to waterclosets herein contained shall, so far as regards such district, or part of a district, be deemed to be satisfied; and such enactments shall, while such order shall remain in force, and to the extent and subject to any conditions therein prescribed, be deemed to be satisfied accordingly. Every such order may from time to time be varied or revoked by the Local Government Board.

Other means
of removing
house refuse.

48. [Privy accommodation for factories to be suitable.]

50. Every sanitary authority shall provide that all drains waterclosets sinks lavatories gully traps earthclosets privies ashpits and cesspools within their district be constructed trapped covered ventilated and kept so as not to be a nuisance or injurious to health.

Drains, privies,
etc., to be
properly kept.

51. On the written application of any person to a sanitary authority, stating that any drain watercloset earthcloset privy ashpit or cesspool on or belonging to any premises within their district is a nuisance or injurious to health (or where on the report in writing of their surveyor or inspector of nuisances the local authority have reason to suspect that any such drain watercloset earthcloset privy ashpit or cesspool is a nuisance or injurious to health), (f) it shall be lawful for any sanitary officer duly authorized in writing in that behalf by such sanitary authority, after twenty-four hours' written notice to the occupier of such premises, or in case of emergency without notice, to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain watercloset earthcloset privy ashpit or cesspool. If the drain watercloset earthcloset privy ashpit or cesspool on examination is found to be in proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the person making the above-mentioned written application. If the drain watercloset earthcloset privy ashpit or cesspool on examination appear to be in bad condition, or to require alteration or amendment, the sanitary authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the sanitary authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses, as well as the expenses incurred in the previous examination.

Examination
of drains, etc.,
on complaint
of nuisance.

SCAVENGING AND CLEANSING *Regulations as to Streets and Houses.*

52. Every sanitary authority may, and when required by order of the Local Government Board shall, themselves undertake to contract for—

Sanitary au-
thority to
provide for
cleansing of
streets and
removal of
refuse.

(f) 7 Ed. VII. c. 53, s. 34.

Sect. 52.

The removal of house refuse from premises ; (g)

The cleansing of earthclosets privies ashpits and cesspools ;
either for the whole or any part of their district : Moreover, every urban authority and any rural authority invested by the Local Government Board with the requisite powers may, and when required by order of the said Board shall themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district.

All matters collected by the sanitary authority or contractor in pursuance of this section may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act ; and any profits thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under this section by that authority in such contributory place are defrayed.

If any person removes or obstructs the sanitary authority or contractor in removing any matters by this section authorized to be removed by the sanitary authority, he shall for each offence be liable to a penalty not exceeding five pounds : Provided, that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance.

Penalty on neglect of sanitary authority to remove refuse, etc.

53. If a sanitary authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earthclosets privies ashpits and cesspools, fail, without reasonable excuse, after notice in writing from the occupier of any house within their district requiring them to remove any house refuse, or to cleanse any earthcloset privy ashpit or cesspool belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the sanitary authority shall be liable to pay to the occupier of such house a penalty not exceeding five shillings for every day during which such default continues after the expiration of the said period.

Houses to be purified, on certificate of officer of health or of two medical practitioners.

56. Where, on the certificate of the medical officer of health or of any two medical practitioners, it appears to any sanitary authority that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing cleansing or purifying of any house or part thereof would tend to prevent or check infectious disease, the sanitary authority shall give notice in writing to the owner or occupier of such house or part thereof to whitewash cleanse or purify the same, as the case may require.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default ; and the sanitary authority shall cause such house or part thereof to be whitewashed cleansed or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

Penalty in respect of certain nuisances on premises.

57. Any person who in any sanitary district—

- (1.) Keeps any swine or pig sty in any dwelling-house, or so as to be a nuisance to any person ; or
- (2.) Suffers any waste or stagnat water to remain in any cellar or place

(g) This *seem* does not apply when the authority have no available funds: *R. v. Dundalk*, 2 L. R. Ir. 440.

within any dwelling-house for twenty-four hours after written notice to him from the sanitary authority to remove the same; or Sect. 57.

(3.) Allows the contents of any watercloset privy or cesspool to overflow or soak therefrom,

shall, for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which the offence is continued, and the sanitary authority shall abate or cause to be abated every such nuisance, and may recover in a summary manner the expenses incurred by them in so doing from the occupier, or, in the case of houses let to weekly or monthly tenants, or in separate apartments, from the owner of the premises on which the nuisance exists.

Offensive Ditches and Collections of Matter

59. Where in any urban district it appears to the inspector of nuisances or sanitary officer that any accumulation of manure dung soil or filth, or other offensive or noxious matter, ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if such notice is not complied with within twenty-four hours from the service thereof, the manure dung soil or filth, or matter referred to, shall be vested in and be sold or disposed of by the urban authority, and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed.

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner from the person to whom the accumulation belongs or from the occupier of the premises, or (where there is no occupier) from the owner.

60. [Periodical removal of manure from mews and other premises.]

Water Supply

61. [General powers for supplying district with water.]

62. [Restriction on construction of waterworks by sanitary authority to whom company unable to afford proper and sufficient supply.]

63. At least two months before commencing to construct under the provisions of this Act any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons) the sanitary authority shall give notice of the intended work by advertisement in one or more of the local newspapers circulating within the district where the reservoir is to be constructed. As to construction of reservoirs.

If any person who would be affected by the intended work objects to such work, and serves notice in writing of such objection on the sanitary authority at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as herein-after mentioned, unless such objection is withdrawn.

The Local Government Board may, on application of the sanitary authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

- Sect. 64.** 64. Where a sanitary authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force.
- Power of carrying mains.**
- As to supply of water.** 65. A sanitary authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water; and where a sanitary authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the district or part of the district supplied.
- Power to charge water rates and rents.** 66. Where a sanitary authority supply water to any premises they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises to be made, assessed, and levied in like manner in every respect as the rate out of which the expenses incurred by such sanitary authority in the execution of this Act are defrayed; moreover, they may enter into agreements for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and may recover water rents or other moneys payable under such agreements in a summary manner.
- Certain provisions of 10 & 11 Vict. c. 17, and 26 & 27 Vict. c. 93, incorporated.** 67. For the purpose of enabling any sanitary authority to supply water there shall be incorporated (*h*) with this Act the Waterworks Clauses Act, 1863, and the following provisions of the Waterworks Clauses Act, 1847; (*i*) (namely,) "With respect" (where the sanitary authority have not the control of the streets) "to the breaking up of streets for the purpose of laying pipes;" and "With respect to the communication pipes to be laid by the undertakers;" and "With respect to the communication pipes to be laid by the inhabitants;" and "With respect to waste or misuse of the water supplied by the undertakers;" and "With respect to the provision for guarding against fouling the water of the undertakers;" and "With respect to the payment and recovery of the water rates."
- Provided,—**
That the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the sanitary authority lay any pipes for the supply of any of the inhabitants thereof; and
That any dispute authorized or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a court of summary jurisdiction; and
That section forty-four of the Waterworks Clauses Act, 1847, shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner," were omitted therefrom; and any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner.
- 10 & 11 Vict. c. 17.** 68. A sanitary authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent or otherwise for every meter provided by them; they shall at all times at their own expense keep
- Power to supply water by measure.**

(*h*) See *R. v. Abbott*, 1897, 2 I. R. 407.

(*i*) See *ante*, p. 279. As to electric light, see *ante*, p. 298.

Sect. 68.

all meters and other instruments for measuring water let by them for hire to any person in proper order for correctly registering the supply of water, and in default of their so doing such person shall not be liable to pay rent for the same during such time as such default continues. The sanitary authority shall for the purposes aforesaid have access to and be at liberty at all reasonable times to remove, test, inspect, and replace any such meter or other instrument.

72. Where on the report of the sanitary officer of a sanitary authority it appears to such authority that any house within their district is without a proper supply of water, and that such a supply of water can be furnished thereto at such cost as the Local Government Board may, on the application of the sanitary authority, determine under all the circumstances of the case to be reasonable, the sanitary authority shall give notice in writing to the owner, requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose. Sanitary authority may require houses to be supplied with water in certain cases.

If such notice is not complied with within the time specified, the sanitary authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district; and water rates may be made and levied on the premises by the authority or company which furnishes the supply, and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same; and any expenses incurred by the sanitary authority in doing any such works may be recovered in a summary manner from the owner of the premises, or may by order of the sanitary authority be declared to be private improvement expenses.

74. All existing public cisterns pumps wells reservoirs conduits aqueducts and works used for the gratuitous supply of water to the inhabitants of the district of any sanitary authority shall vest in and be under the control of such authority, and such authority may cause the same to be maintained and plentifully supplied with pure and wholesome water, or may substitute, maintain, and plentifully supply with pure and wholesome water other such works equally convenient; they may also (subject to the provisions of this Act) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use. Vesting of public cisterns, etc., in sanitary authority.

75. Any sanitary authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or wash-houses, or for trading, or manufacturing purposes, on such terms and conditions as may be agreed on between the sanitary authority and the persons desirous of being so supplied; moreover, any sanitary authority may, if they think fit, construct any works for the gratuitous supply of any public baths or wash-houses established otherwise than for private profit or supported out of any poor or borough rates. Water for public baths, or trading or manufacturing purposes.

76. In every urban sanitary district, or part of such district, in which and so far as no water company shall be by law liable to the obligation of doing the several matters and things mentioned in this section, the urban authority shall cause fire-plugs and all necessary works, machinery, and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person; and they shall paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient. Duty of urban authority to provide fire-plugs.

79. [Powers to close polluted wells, etc., by order of court of summary jurisdiction.]

REGULATION OF CELLAR DWELLINGS AND LODGING-HOUSES

*Occupation of Cellar Dwellings***Sect. 82.**

Definition of
occupying as
a dwelling.

82. [Prohibition of occupying cellar dwellings.]
 83. [Existing cellar dwellings only to be let or occupied on certain conditions.]
 85. Any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act.
 86. [Power to close cellars used as a dwelling in case of two convictions, by order of court of summary jurisdiction.]

Common Lodging-houses (k)

Power to order
reports from
keepers of
houses receiv-
ing vagrants.

88. [All common lodging-houses to be registered, and to be kept only by registered keepers.] (l)
 92. [Power to sanitary authority to require supply of water to houses.]
 93. [Limewashing of houses.]
 94. The keeper of a common lodging-house in which beggars or vagrants are received to lodge shall from time to time, if required in writing by the sanitary authority so to do, report to the sanitary authority, or to such person as the sanitary authority direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the sanitary authority to the person so ordered to report, which schedules he shall fill up with the information required and transmit to the sanitary authority.

Keepers to
give notice of
fever, etc.,
therein.

95. The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease, give immediate notice thereof to an officer of the sanitary authority, and also to the poor law relieving officer of the union in which the common lodging-house is situated.

As to in-
spection.

96. The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer of the sanitary authority, give him free access to such house or any part thereof; and any such keeper or person who refuses such access shall be liable to a penalty not exceeding five pounds.

Markets and Slaughter-houses

103. [Urban authority may provide markets] but no market shall be established in pursuance of this section so as to interfere with any rights, powers, or privileges enjoyed within the district by any person without his consent.

10 & 11 Vict.
c. 14.

For the purpose of enabling any urban authority to establish or to regulate markets, there shall be incorporated with this Act the provisions of the Markets and Fairs Clauses Act, 1847, (m) in so far as the same relate to markets; (that is to say,) . . .

With respect to the stallages, rents, and tolls:
 Provided, that all tolls leviable by an urban authority in pursuance of this section shall be approved by the Local Government Board.

(k) See also 7 Ed. VII. c. 53, Part V., 7 Ed. VII. c. 53, s. 74, *ante*, p. 324.
ante, p. 324.

(m) See *ante*, p. 302.

(l) See s. 87 and also s. 2, *ante*, and

Nuisances

107. For the purposes of this Act,—

Sect. 107.

1. Any premises in such a state as to be a nuisance or injurious to health :
2. Any pool ditch gutter watercourse privy urinal cesspool drain or ashpit so foul or in such a state as to be a nuisance or injurious to health :
3. Any animal so kept as to be a nuisance or injurious to health :
4. Any accumulation or deposit which is a nuisance or injurious to health :
5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family :
6. Any factory workshop or workplace not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein :
7. Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill factory dyehouse brewery bakehouse or gaswork, or in any manufacturing or trade process whatsoever ; and
8. Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance, (n)

Definition of nuisances.

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act : Provided,—

First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health :

Secondly. That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof.

This section shall be deemed to be an enactment substituted for the provisions of section nineteen of the Public Health Act, 1866, within the meaning of section one hundred and six of the Factory and Workshop Act, 1878. (o)

108. It shall be the duty of every sanitary authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the

Duty of sanitary authority to inspect district for detection of nuisances.

(n) See also 43 & 49 Vict. c. 72, s. 9, ante, p. 239.

(o) See now 1 Ed. VII. c. 22.

Sect. 108. provisions of any Act in force within their district requiring fireplaces and furnaces to consume their own smoke.

Sanitary authority to serve notice requiring abatement of nuisance.

110. On the receipt of any information respecting the existence of a nuisance the sanitary authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, (*p*) or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose: Provided,—

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:

Secondly. That where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act default or sufferance of the owner or occupier of the premises, the sanitary authority may themselves abate the same without further order.

111. [On non-compliance with notice, complaint to be made to justice.]

112. [Power of court of summary jurisdiction to make order dealing with nuisance.] (*q*)

113. [Order of prohibition in case of house unfit for human habitation.]

114. [Penalty for contravention of order of court; authority may enter thereunder and execute works.]

Appeal against order.

115. Where any person appeals against an order to the court of quarter sessions in manner provided by this Act, no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted.

Power to sell manure, etc.

117. Any matter or thing removed by the sanitary authority in abating any nuisance under this Act may be sold by public auction; and the money arising from the sale may be retained by the sanitary authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Power of entry of sanitary authority.

118. The sanitary authority, or any of their officers, shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the sanitary authority, or any of their officers, shall be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the sanitary authority, or any of their officers, shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same.

If admission to premises for any of the purposes of this section is refused,

(*p*) It is *seem*le an answer that the person cannot enter the premises to abate the nuisance: *Letterkenny v. Collins*, 28

L. R. Ir. 235.

(*q*) See *R. v. Co. Down*, 1905, 2 I. R. 648.

Sect. 118.

any justice, on complaint thereof on oath by any officer of the sanitary authority (made after reasonable notice in writing of the intention to make the same has been given to the person having custody of the premises), may, by order under his hand, require the person having custody of the premises to admit the sanitary authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, on oath made before him of that fact, by order under his hand, authorize the sanitary authority, or any of their officers, to enter such premises during the hours aforesaid.

Any order made by a justice for admission of the sanitary authority, or any of their officers, on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done. (r)

122. Where it is proved to the satisfaction of the Local Government Board that a sanitary authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorize any officer of police or constabulary acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances; and such officer may recover in a summary manner or in the Civil Bill or any superior court, any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority:

Power of officer of police to proceed in certain cases against nuisances.

But such officer of police or constabulary shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice, for the purpose of carrying into effect this enactment.

124. Where a nuisance under this Act within the district of a sanitary authority appears to be wholly or partially caused by some act or default committed or taking place without their district, the sanitary authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorized, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

Power to proceed where cause of nuisance arises without district.

125. [Provision in case of two convictions for overcrowding for closing premises by order of justice.]

126. For the purpose of the provisions of this Act relating to nuisances any ship or vessel lying in any river harbour or other water within the district of a sanitary authority shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river harbour or other water not within the district of a sanitary authority shall be deemed to be within the district of such sanitary authority as may have been or may be prescribed by the Local Government Board, and where no sanitary authority has been prescribed, then of the sanitary authority whose district nearest adjoins the place where such ship or vessel is lying.

Provision as to ships.

The master or other officer in charge of any ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel under the command or charge of any officer bearing Her Majesty's commission, or to any ship or vessel belonging to any foreign government.

(r) See *Rice v. White*, 1904, 2 I. R. 8. Vict. c. 32, s. 9; 52 & 53 Vict. c. 21, s. 29, See also 48 & 49 Vict. c. 72, s. 9; 49 & 50 and 8 Ed. VII. c. 67, s. 2, *ante*, p. 288.

Offensive Trades

Sect. 130. 130. [Duty of urban authority to complain to justice of nuisance arising from offensive trade.]

Unsound Meat, etc.

Power of medical officer of health to inspect meat, etc.

132. Any sanitary officer of the sanitary authority may at all reasonable times inspect and examine any animal carcase meat poultry game flesh fish (s) fruit vegetables corn bread flour milk (t) or butter exposed or being conveyed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or being conveyed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal carcase meat poultry game flesh fish fruit vegetables corn bread flour milk or butter appears to such sanitary officer to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself, or by an assistant, in order to have the same dealt with by a justice; and should he seize the same in a public thoroughfare, may require the person conveying the same to give his own name and address and that of the owner of the article seized, and in default, or if the officer have reasonable ground for suspecting the names or addresses so given to be false, may detain such person and give him into custody until his real name and address be ascertained. Any person giving a false name or address to any officer authorized to demand the same under this section shall be liable to a penalty not exceeding five pounds. (u)

133. [Power of justice to order destruction of unsound meat, etc.] (x)

INFECTIOUS DISEASES

Provisions against Infection (y)

Duty of sanitary authority to cause premises to be cleansed and disinfected.

137. Where any sanitary authority are of opinion, on the certificate of their sanitary officer, or of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infectious, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice in writing to the owner or occupier of such house or part thereof, requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice.

If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than one shilling and not exceeding forty shillings for every day during which he continues to make default; and the sanitary authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner.

Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the sanitary authority, effectually to carry out the requirements of this section, such authority may, without

(s) See also 40 & 41 Vict. c. 42, ss. 8, 9, 12, and 52 & 53 Vict. c. 11, *ante*, p. 291.

(t) As to taking samples of milk and milk products, see 8 Ed. VII. c. 56, s. 16.

(u) See 53 & 54 Vict. c. 59, s. 28, and *Daly v. Webb*, *ante*, pp. 291, 311.

(x) Sanitary authority may order de-

struction of milch cow affected with tuberculosis of the udder: 8 Ed. VII. c. 56, s. 18.

(y) The Infectious Diseases Prevention Act, 1890, *ante*, pp. 307, 308, applies to Ireland if adopted. See also 7 Ed. VII. c. 53, Part IV., *ante*, p. 323.

enforcing such requirements on such owner or occupier, with his consent cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof. **Sect. 137.**

138. Any sanitary authority may direct the destruction of any bedding clothing or other articles which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same. **Destruction of infected bedding, etc.**

139. Every sanitary authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding clothing or other articles which have become infected, and shall cause any articles brought for disinfection to be disinfected free of charge, and may provide for the conveyance of such articles to such place. **Provision of means of disinfection.**

140. Every sanitary authority shall provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any infectious disorder, and shall pay the expense of conveying therein any person so suffering to a hospital or other place of destination, and shall keep such carriage or carriages properly disinfected. **Provision of conveyance for infected persons.**

141. [Removal of infected persons without proper lodging to hospital by order of justice.](z)

Prevention of Epidemic Disease

151. The board of guardians of any union within which, or within part of which, regulations issued by the Local Government Board (a) are declared to be in force, and their officers, shall have power of entry on any premises or ships or vessels for the purpose of executing or superintending the execution of any regulations so issued by the Local Government Board as aforesaid. **Power of entry.**

152. Whenever, in compliance with any regulations so issued by the Local Government Board as aforesaid, the medical officer of health of any sanitary district performs any medical service on board any ship or vessel he shall be entitled to charge extra for such service, at a rate to be fixed by the Local Government Board; and such charges shall be payable by the captain of such vessel on behalf of the owner thereof, together with any reasonable expenses for the treatment of the sick. **Poor law medical officer entitled to costs of attendance on board vessels.**

Where such services are rendered by any medical practitioner who is not a medical officer of health of any sanitary district, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid. In case of dispute in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined by a court of summary jurisdiction; and such court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

155. [Hospital accommodation may be provided.]

156. Any expenses incurred by a sanitary authority in maintaining a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper shall be deemed to be a debt due from such patient to the sanitary authority, and may be recovered from him at any time within six months after his discharge from such hospital. **Recovery of cost of maintenance of patient in hospital.**

(z) See also 7 Ed. VII. c. 53, s. 65, and 8 Edw. VII. c. 67, s. 5, *ante*, pp. 292, 323.

(a) See s. 150.

- Sect. 156.** or place of reception, or from his estate in the event of his dying in such hospital or place. (b)
 158. [Justice may in certain cases order removal of dead body to mortuary.]

PART IV

GENERAL PROVISIONS

Arbitration.

216. [Mode of reference to arbitration.]
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PART V

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229. [Power to make private improvement rates.]

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Prosecution of Offences and Recovery of Penalties, etc.

254. [Summary proceedings for recovery of rates.]
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267. [Service of notices.]

Appeals

268. [To Local Government Board.]
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PART VII

MISCELLANEOUS PROVISIONS

271. [Entry on lands for purposes of Act under warrant of justice where permission refused.]
 274. [Compensation in case of damage by sanitary authority.]

PART VIII

SAVING CLAUSES

Saving for
works and pro-
perty of certain
authorities,
and for naviga-
tion and water
rights, etc.

281. Nothing in this Act shall be construed to authorize any sanitary authority—
 (1.) To use, injure, or interfere with any sluices floodgates sewers groynes

(b) See 7 Ed. VII. c. 53, s. 60.

- or sea defences, or other works already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land; or
- (2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in Her Majesty's Principal Secretary of State for the War Department for the time being; or
 - (3.) To interfere with any river canal dock harbour lock reservoir or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river canal dock harbour lock reservoir or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof; or
 - (4.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river canal dock harbour reservoir or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference; or
 - (5.) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is authorized by virtue of any Act of Parliament to navigate or use such river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof; or
 - (6.) To execute any works in, through, or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are herein-before in that behalf respectively mentioned, such consent to be expressed in writing in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorized officer or agent; and nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

284. No transfer of powers and privileges under this Act shall deprive any body of persons or person authorized by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

285. Any body of persons or person authorized by virtue of any Act of Parliament to navigate on or use any river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock harbour or basin, may, at their own expense, and on

Provision as
to transfer of
powers, etc.

Provision as
to alteration
of sewers.

Sect. 285. substituting other sewers drains culverts and pipes equally effectual, and certified as such to the sanitary authority, take up divert or alter the level of any sewers drains culverts or pipes constructed by any sanitary authority, and passing under or interfering with such rivers canals docks harbours or basins, or the towing-paths thereof, and may do all such things as may be necessary for carrying into effect such taking up, diversion, or alteration.

Saving for
water rights
generally.

286. Nothing in this Act shall be construed to authorize any sanitary authority to injuriously affect any reservoir canal river or stream, or the feeders thereof, or the supply, quality, or fall of water contained in any reservoir canal river stream, or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water unless the sanitary authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid.

287. [Arbitration as to alteration of sewers injuriously affecting supply of water, etc.]

Saving for
mines, etc.

288. Nothing in this Act shall be construed to extend to any mines so as to interfere with or to obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining puddling and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively.

Saving for
corporate
bodies and
Government
departments.

289. Any corporate body required or authorized by or in pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865, (c) and the Sewage Utilization Act, 1867, (c) shall apply in substitution for the last-mentioned provisions.

Saving for pay-
ment in certain
cases to sani-
tary authority.

290. Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of this Act to any sanitary authority in respect of any premises without their district which have a drain communicating with a sewer within their district: Provided, that any such sum shall cease to be payable, if and when the connexion between the drain and the sewer is discontinued, from the time of such discontinuance; but if after the discontinuance the connexion is re-established, the yearly sum shall again become payable, and so from time to time.

Saving for pro-
ceedings under
local Acts.

292. Where within the district of a sanitary authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act, proceedings may be instituted at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications:

- (1.) That no person shall be punished for the same offence both under a local Act and this Act; and
- (2.) That the sanitary authority shall not, by reason of any local Act in force within their district, be exempted from the performance of any duty or obligation to which they may be subject under this Act.

Powers of Act
to be cumu-
lative.

293. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this

(c) Repealed by this Act.

Act had not passed; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed. Sect. 293.

Provided, that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

The Public Health Acts Amendment Acts, 1890 and 1907,
apply to Ireland. (d)

The Adulteration, Diseases of Animals and Explosives Acts,
apply. (e)

(d) *Ante*, pp. 308, 313, and as to the adoption in case of tuberculosis of the provisions of the Infectious Diseases Pre-

vention Act, 1890, *ante*, p. 307. See 8 Ed. VII. c. 56, ss. 2, 3.

(e) *Ante*, pp. 255-257.

2. INHERENT POWERS

CONSTABLES

*Inherent
Powers.
Constables.*

Arrest.

Brawling,
breach of
peace, etc.

Arrest.—The law as to brawling, breach of the peace, cruelty to animals, drunkenness, escape, diseases of animals, explosives, hawkers, indecent advertisements, guns, licensing, merchant seamen, motor cars, pedlars, post and street betting is as in England. (a)

Highways.

As to highways, by the Summary Jurisdiction (Ireland) Act, 1851—

*Injuries to
public roads.*

Omitting to
scour ditches
after notice,
or to have
drains under
passages in
and out of
roads.

where the name and residence of offenders committing any of the following offences upon public roads or streets shall be unknown and cannot be ascertained they may with or without warrant be arrested by any county or sub-inspector head or other constable of the constabulary or any persons whom he may call to his assistance. (b)

9. Any person who shall commit any of the next following offences on or relating to any public road: . . .

1. Any owner or occupier of any lands contiguous to any public road who shall omit to scour any ditch or drain leading from such road, so as to allow the water to pass away, within ten days after notice shall have been given to him so to do by the county surveyor or by the contractor for the repair of such road, or who shall suffer the passage of the water to be obstructed by making or leaving any way or passage from any road into the adjoining lands, or into his house, without a sufficient pipe, sewer, or gullet underneath it.

2. Any person who shall build or cause to be built any house or part of a house within thirty feet of the centre of any public road, except in the streets of corporate or market towns, or where a house now stands.

3. Any person who shall scour, deepen, widen, or fill up any ditch or drain on the side of any public road, or who shall alter the fences of any public road; or who shall build any wall, or make any ditch, drain, or watercourse, or dig any pit or hollow, on any public road, or within thirty feet of the centre thereof (save upon or within any ancient fence adjoining such road); or who shall otherwise break up the surface of any road or footpath, unless with the consent of the county surveyor, or by the authority of any [county council] . . . (and the centre of the road, for the purposes of this Act, shall be deemed to be the centre of the part thereof made with gravel or stones):

(a) *Ante*, pp. 266, 371 *et seq.*

(b) 14 & 15 Vict. c. 92, s. 14. The payment of this force out of monies pro-

vided by Parliament is directly opposed to the principles of our jurisprudence.

Building
houses within
30 feet of the
centre of the
road.

Deepening
ditches or
altering fences,
etc., without
consent of
county sur-
veyor.

(What shall be
deemed the
centre of the
road.)

4. Any person who shall, without the consent of such surveyor or contractor, scrape any public road, or who shall draw any timber or stones along any part of a public road, without being supported by wheels from touching the same, or who shall ride or drive any horse or other animal, willingly and unnecessarily, on any footpath : **Sect. 9.**
Scraping roads, etc., without consent of county surveyor.
5. Any county surveyor or road contractor, or other person, who shall dig, raise, and carry away any gravel, stones, sand, or other materials from the side of any public road, or from any beach or sea-shore, whereby a public road, or bulwark or defence to any bridge or like building, or any land within the fences of any such road, may be injured : Drawing timber, etc., so as to injure road.
6. Any person who shall wilfully damage or destroy any pay gate or any post, rail, wall, chain, bar, or other fence of any kind whatsoever, which shall be used to prevent passengers from passing by without paying the toll payable by virtue of any Act of Parliament, or any toll house for the use of any such pay gate, or who shall forcibly rescue or attempt to rescue any person or persons, being lawfully in custody of any constable or other person for any such offences : Riding on footpaths. Taking materials to the injury of any roads, etc. Destroying any pay gate, etc.; or rescuing person in custody for such offences.
7. Any person who shall wilfully prevent or assault, or threaten to prevent or assault, any county surveyor or road contractor in the execution of his duty, or any person or persons employed by proper authority in surveying or measuring or laying out any line intended for a new road ; or who shall wilfully destroy, pull up, deface, or injure any surveyors instruments or implements used in making or laying out any public road, or any milestone, milepost, or direction post, or any bridge, battlement, wall, railing, mound, or fence belonging to any public road ; or who shall wilfully break, deface, pull down, or take away stones out of any such battlement, wall, mound, or fence, or out of any bridge, pipe, arch, or gullet belonging to any public road : Assaulting engineers, surveyors, or contractors on public roads, etc.
8. It shall be lawful for any two justices of the county, upon application of the county surveyor, to forbid any person or persons from riding or driving any kind of beast or carriage on any new road for such space of time as shall to them appear necessary, not exceeding six months after such new road shall have been made, and the expenditure thereon duly accounted for at special sessions ; . . . any person who shall wilfully disobey such order (the same being duly notified by a notice affixed to a board or boards erected upon such road) : Justices may forbid the using of a new road for a certain time after making thereof, etc.

And if the county surveyor or the contractor for the repairing of any public road in any county shall think that such road is prejudiced by any of such neglects or offences as aforesaid, or by the shade of any hedges or trees, (except those planted for ornament or shelter of any dwelling house, courtyard, or garden,) or that any obstruction is caused in any public road by any hedge or tree, it shall be lawful for such surveyor or contractor, by notice in writing, to require the person who shall be guilty of any such neglect or offence, or the owner of the land on which such hedges or trees are growing, as the case may be, to fill up any ditch or drain which shall have been so scoured, deepened, or widened, or to scour any drains which have been so filled on the side of any public road without the consent of the said county surveyor or the authority of a [county council], or to scour or deepen any drain or ditch leading from any road which shall be omitted to be scoured or deepened after due notice by such surveyor or contractor, or to remove any way or passage from any road into any adjoining land or to any house which may obstruct the free passage of the water, or to remake the same by building a gutter, sewer, or arch therein, or to pull down any wall or fill up

County surveyor or contractor may require owners of land to remove obstructions, etc., and to prune hedges or trees injuring roads.

Sect. 9.

Owners not complying to be summoned before justices at petty sessions;

who may order obstructions to be removed, etc.; and on refusal of owner, the surveyor or contractor may do it at expense of owner.

Trees, etc., to be cut or pruned only at certain seasons.
Nuisances on public roads.

Turning horse, etc., loose.

Negligence in driving cattle, etc.

Flying kites, etc., or making slides.

Fireworks, etc.

Leaving ploughs, harrows, etc., on the road.

Slaughtering beasts, etc., on a road.

Laying stones, timber, etc.

Scalding casks, beating flax, or winnowing corn, etc.

Keeping dogs unlogged or unmuzzled.

Drying flax or burning bricks or weeds, etc.

any ditch or drain the building of which shall have been an offence against the provisions of this Act, or to cut or plash such hedges, or to prune or lop such trees, so as that such road may not be prejudiced or obstructed by the same; and if such person or owner shall not comply with such request within ten days after such notice, it shall be lawful for such surveyor or contractor as aforesaid to summon such person or owner before the justices: . . . Provided always, that no person shall be compelled, nor any such surveyor or contractor as aforesaid permitted, to cut or prune any hedge at any other time than between the last day of September and the last day of March.

10. Any person who shall commit any of the next following offences: . . .

1. Any person who shall in any public road or street of a town turn loose any horse or cattle, or set on or urge any dog or other animal to attack or worry any person, horse, or other animal, or who by negligence or illusage in driving cattle shall in any public road or any street of a town cause any mischief to be done by such cattle:

2. Any person who shall fly any kite or play at any game, or make or use any slide upon ice or snow, on any public road or in any street of a town, to the danger of the passengers; or who shall cast or throw any fireworks or discharge any fire-arms on any public road, or within sixty feet of the centre thereof, or in any street or passage of a town, or who shall cast, throw, or discharge the same, or suffer the same to be cast, thrown, or discharged, from out of his house, shop, dwelling, lodging, or habitation, or from out of any place thereto belonging, into any public road, street, or passage:

3. Any person who shall leave or permit to be left on any public road any plough, harrow, cart, or other carriage, without the horse or other animal being harnessed thereto, unless such carriage shall have been accidentally broken down there:

4. Any person who shall slaughter any beast, or leave any dead beast, or skin or permit to be skinned any beast, on any public road or within thirty feet of the centre thereof, (save within any house or inclosed yard):

5. Any person who shall lay any stones, timber, dirt, dung, turf, straw, rubbish, or scourings of any ditches or drains, or other object, on any public road or within thirty feet of the centre thereof, or in any street of a town, so as to cause danger or mischief to any passengers, and shall allow the same to remain there longer than shall be absolutely necessary:

6. Any person who shall hoop, scald, or fire any cask, or bind any car or cart wheels, or beat any flax, or thresh or winnow any corn, on any public road or street of a town, or within thirty feet of the centre thereof, (save within any house or inclosed yard):

7. Any person who shall keep or suffer to be at large within fifty yards of any public road any dog, without having such dog muzzled, or without having a block of wood fastened to the neck of such dog, of sufficient weight to prevent such dog from being dangerous. [Justices may order dangerous dogs to be killed.]

8. Any person who shall dry any flax, or burn any bricks or lime, or any weeds or vegetables for ashes, or make or assist in making any fires commonly called bonfires, or any other kind of fire, upon any public road or within sixty feet of the centre thereof, (save within any house or inclosed yard):

9. Any person who shall lead or drive on any public road or street of a town any car or other carriage with timber, boards, or iron laid across, so that either end shall project more than two feet beyond the wheels or sides thereof : Sect. 10.
Carrying timber, etc., crosswise.

10. Any person who shall expose upon any public road or in any street of a town any horse or other animal for show, hire, or sale, except in any fair or market or other place lawfully appointed for that purpose : Exposing horses, etc., for show, hire, or hire.

11. Any person who shall allow any swine or other beast to wander upon any public road, or about the streets or passages of any town ; . . . and in case the owner shall not be known, it shall be lawful for any person by whom any such swine or other beast shall be found wandering upon any such road, street, or passage, to impound the same, subject to the provisions hereinafter contained as to the impounding distresses : (c) Allowing swine, etc., to wander on roads.
Swine, etc., wandering on roads may be impounded if owner is not known.

Provided always, that nothing herein contained shall render any county surveyor or road contractor liable to any fine for any act done by such surveyor in the discharge of the duties of his office, or by such contractor in the necessary execution or performance of his contract ; but if any such surveyor or contractor shall lay or cause to be laid any heap of stones, gravel, rubbish, or other matter whatever, upon any public road, and allow the same to remain there at night, to the danger or personal damage of any person passing thereon, (all due and reasonable precautions not having been taken by him to prevent any such danger or damage,) such surveyor or contractor shall be liable to a fine not exceeding five pounds. Surveyor or contractor not liable to fine, except in certain cases.

11. Any of the persons herein-after mentioned who shall commit any of the next following offences on any public road or in any street of a town : Public stage carriages.

1. Any driver, owner, or guard of any coach, omnibus, car, caravan, or other carriage, by what name soever the same is or shall hereafter be called or known, which shall be employed as a public stage carriage for conveying passengers for hire, who shall permit more passengers to be carried by the same than the number for whom seats shall be respectively provided, inside or outside of the same, allowing a space of at least sixteen inches for each passenger, over and above the space allotted to the driver and guard when there is a guard ; but no child under seven years of age shall be included in or counted as one of such number ; and it shall be lawful for any justice, county inspector, sub-inspector, head or other constable, to stop any such carriage which shall appear to carry a greater number of passengers than the above, and to measure the seats of same, in order to ascertain whether sufficient space has been allotted to the passengers : Carrying more than a certain number.
Justices, etc., may stop carriages in order to measure seats.

2. Any driver, owner, or guard of any such public stage carriage, who shall allow any passenger to sit upon the top of any luggage, or upon any part of such carriage not intended to carry passengers, or who shall carry or permit or suffer any parcel or parcels of luggage whatever exceeding two feet in height above the roof to be conveyed on any such carriage carrying inside passengers : Carrying luggage on the top of any carriage with inside passengers exceeding a certain height, etc.

3. Any person who shall keep and employ any such public stage carriage, and who shall not paint or cause to be painted on the outside of the door, or of each door when there shall be more than one, of such carriage, or on some other conspicuous part of such carriage where there shall be no door, in legible letters of at least one inch in height, and in a different colour from the ground on which the same is painted, and in words at Omitting to paint number of passengers to be conveyed, etc., on the doors, etc., of public carriages.

(c) See s. 19.

Sect. 11.

Misconduct of
drivers, etc.

Drivers leaving
their horses
until a proper
person shall
stand at their
head, or allow-
ing others to
drive, etc.

Carts and cars.

Where names
of owners are
not painted on
carts, etc.

One driver
taking charge
of more than
one cart, etc.,
except in cer-
tain cases.

Drivers of
carts riding
thereon with-
out some other
person to guide
them, etc.

Drivers leaving
their carts.

Drivers re-
fusing to tell
owners' names.

length, the number of passengers which such carriage shall be intended to carry, together with the name or names of the person or persons or firm of the company of proprietors to whom such carriage shall belong, or who shall cause any such carriage as aforesaid to be employed or used for carrying any passengers for hire without having the said words painted in such manner as is herein-before directed :

4. Any driver or guard of any such public stage carriage who shall wilfully mis-spell or lose time on the road, or who shall use abusive or insulting language to any passengers, or who by reason of intoxication, negligence, or other misconduct, shall endanger the passengers in their lives or their property, or the property of any other person with which they may be intrusted, or who shall demand or exact more than the proper fare due from any passenger :
5. Any driver of any such public stage carriage who shall (at any place or places where assistance can be procured) quit his horse or horses, or the box of such carriage, until a proper person or persons shall stand at the head of the horse or horses or fore horse or fore horses, or shall hold the reins so as to prevent them from running away ; or any such last-mentioned person or persons who shall not remain at their head or hold the reins until the driver has returned to his box ; or any driver of any such carriage who shall intrust the reins to any other person to drive such carriage, or any person who shall so take such reins and drive such carriage.
12. Any of the persons herein-after mentioned who shall commit any of the next following offences on any public road, or in any street of a town,
 1. Any owner of any cart, car, dray, or other such carriage used for the conveyance of goods, who shall use or allow the same to be used on any public road or street without having his name and residence painted upon some conspicuous part of the right or off side of such carriage, in legible letters (*X*) not less than one inch in height, and in a different colour from the ground on which the same is painted, and in words at length, or who shall paint or cause to be painted any false or fictitious name or residence on such carriage :
 2. Any person who shall act as the driver or have the sole charge of more than one such carriage as last aforesaid on any public road or street, unless in the cases where two of such carriages and no more shall be drawn each by one horse only, and the horse of the hinder of such carriages shall be attached by a different rein to the back of the foremost of such carriages :
 3. Any person having the care and charge of any such carriage as last aforesaid, who shall ride upon the same, or upon any horse drawing the same, on any public road or street, except where he shall be accompanied by some other person on foot or on horseback to guide the same, or where such carriage shall be driven with reins, and be conducted by some person holding the reins of all the horses drawing the same :
 4. Any driver of any such carriage as last aforesaid who shall negligently or wilfully be at such distance from such carriage, or in such a situation, that he cannot have the direction of the horse or horses drawing the same, or who shall leave any such carriage on such road or street so as to obstruct the passage thereof :
 5. Any driver of any such carriage as last aforesaid, not having the owner's

(*d*) *I.e.* English letters : *M'Bride v. M'Govern*, 1906, 2 I. R. 181.

name thereon as hereby required, and remaining legible thereon, who shall refuse to tell or to discover the true christian and surname and residence of the owner of such carriage. Sect. 12.

13. Any person who shall on any public road or street commit any of the next following offences : *Rules of the road.*

1. Any person driving any carriage whatsoever, or riding any horse or other animal, who, meeting any other carriage or horse or other animal, shall not keep his carriage or horse or other animal on the left or near side of the road or street, or, if passing any other carriage or horse or other animal going in the same direction, shall not, in all cases where it is practicable, go and pass to the right or off side of such other carriage or horse or other animal : Keeping on wrong side of the road.
2. Any person riding any horse, and leading any other horse, who shall not keep such led horse on the side farthest away from any carriage or person passing him on any public road or in any street of a town : Passing with a led horse.
3. Any person who shall in any manner wilfully or by negligence or misbehaviour prevent or interrupt the free passage (e) of any person or carriage on any public road or street, or crossing : Obstructing free passage of persons or carriages.
4. Any person riding any horse or animal, or driving any sort of carriage, who shall ride or drive the same furiously on any public road or street so as to endanger any passenger or person, (f) or who shall by carelessness or wilful misbehaviour cause any injury to any person or property on any public road or street : Furious driving. Negligent driving, etc.
5. And no cart, dray, waggon, or other such carriage, and no hackney car or carriage, or car or carriage let on hire, travelling on any public road or street, shall be driven by any person who shall not be of the full age of thirteen years. (g) Children under thirteen years not to drive certain vehicles.

As to licensing—

Licensing.

Any constable may demand the name and address of any person found on any premises during the period during which they are required by the provisions of the Licensing Act, 1872, (h) to be closed, (i) and if he has reasonable ground to suppose that the name or address given is false may require evidence of the correctness of such name and address and may if such person fail upon such

Persons found during closing hours.

(e) Applies to a person riding a bicycle on a footpath; a bicycle is a carriage: *McKee v. McGrath*, 30 L. R. Ir. 41. And to things placed on a road although no one is thereby obstructed; *R. v. Fermanagh*, 14, *ib.* 50. And to barbed wire where the fence is altered: *Cohen v. Ellis*, 32, *ib.* 491.

(f) And see 7 Ed. VII. c. 53, s. 79, *ante*, p. 418.

(g) See *Loudens v. Keatney*, 1903, 2 I. R. 82.

(h) By 23 & 24 Vict. c. 107, s. 43, premises must be closed up to 7 a.m. and on Good Friday or any day of fast or thanksgiving to 2 p.m. By 35 & 36 Vict. c. 94, s. 78, they must be closed on such days at 9 p.m. in any city or town of 5000 and elsewhere at 7 p.m. and on other days at 10 p.m. Not to extend to bona fide travellers or lodgers or persons arriving at

or departing from a station by train. By 5 Ed. VII. c. 3, such premises must be closed the whole of Christmas Day; and the exemption extends to packet-boats and canteens and clubs.

(i) The effect of 41 & 42 Vict. c. 72, s. 1, and 6 Ed. VII. c. 39, ss. 1, 2, and 3 is to extend the close time to all Sunday except in Dublin Metropolitan Police District and Cork Limerick Waterford and Belfast and there to 2 p.m. and after 5 p.m. And to prohibit sale or keeping open on Saturday after 10 p.m. in places over 5000 and 9 p.m. elsewhere. Not to apply to places of amusement, nor to sales to lodgers or bona fide travellers, and this last phrase in the places above-mentioned is deemed to apply only to persons who lodged 5 miles distant the preceding night. See *Dorrian v. McHugh*, 1907, 2 I. R. 564.

Sect. 27. demand to give his name or address or such evidence apprehend him without warrant and carry him as soon as practicable before a justice. (*k*)

Spirit grocer. It shall and may be lawful for any superintendent of police or any constable duly authorized for such purpose by any justice or superintendent . . . to enter into any premises kept by a spirit grocer (*l*) for selling intoxicating liquors at any time or hour during which the sale of such liquors by such spirit grocer is prohibited by this Act and to remove from and put out of such premises any person who shall be so found within such prohibited hours in such house or place (not being a lodger in or an inmate of such premises) and who shall appear to be or to have recently been drinking tippling or gaming therein; and if any such person shall not when thereto requested by such . . . superintendent or constable remove from and quit such premises or shall forcibly resist such . . . superintendent or constable or shall be found drunk therein it shall and may be lawful for any superintendent of police or for any constable to apprehend and take into custody any such person so offending and to carry and convey or cause to be carried and conveyed every and any such person so apprehended before a justice. (*m*)

Drunk on highway. Every person who in any highway or other public place whether a building or not (*n*) is so drunk as to be incapable of taking care of himself may be detained by any constable until he can with safety to himself be discharged. (*o*)

Illegal societies on licensed premises. It shall and may be lawful for any . . . chief constable or for any constable authorized for the purpose by [a] justice or chief constable . . . to enter into any house or place kept by any person selling or having a licence to sell spirits wine or beer by retail to be consumed on the premises or otherwise in which such justice or chief constable shall from information on oath or otherwise have reason to believe or suspect that [any body union society or assembly of persons declared to be illegal or prohibited by any law in force at the time of the passing of this Act or any body etc. who shall require from persons about to be admitted or being admitted thereto any oath test solemn declaration or form not expressly allowed and required by law or shall observe on the admission of members or on any other proceeding any religious or other solemn mystery rite or ceremony or seeming or pretended religious or other mystery etc. not sanctioned by law or who shall wear bear or display on occasions of their meeting or assembling together any arms flags colours symbols decorations or emblems whatsoever is met or held or on or from which any such signs etc. shall be hung out or displayed] and to remove from and put out of such house or place any persons who shall be found met or assembled therein with or as members of or belonging to any such body etc. and to remove and take away and destroy if he shall think proper any arms etc. found on or with such persons or hanging out or displayed on or from such house or place and to require every such person so found to state truly to him his name and place of abode and to require the immediate inspection of and take possession of any book of proceedings or other book used at such meeting or brought thereto and to detain such book for such time as he may think proper not exceeding fourteen days and if any such person shall not when thereto required by any such chief . . . or other constable as aforesaid remove from and quit such house or if any person whatsoever shall forcibly resist such . . . constable . . .

(*k*) 37 & 38 Vict. c. 69, s. 27.

(*l*) Any person dealing in or selling tea cocoa-nuts chocolate or pepper and having no excise licence to sell spirits by retail in any quantity not exceeding two quarts at any one time to be consumed elsewhere than on the premises where sold: s. 81.

(*m*) 35 & 36 Vict. c. 94, s. 87. See 3 &

4 Will. IV. c. 68, s. 15, and 6 & 7 Will. IV. c. 38, s. 6, which apply to retail houses to the same effect.

(*n*) As to person found drunk in charge of children, see 8 Ed. VII. c. 24, s. 9, and as to drunken employes, s. 8.

(*o*) 37 & 38 Vict. c. 69, s. 25.

it shall and may be lawful for any constable to apprehend and take into custody any person so offending and to carry and convey or cause to be carried and conveyed every and any such person so apprehended before a justice. (*p*) Sect. 9.

All constables . . . are required on the demand of the manager occupier agent or servant of any shop house premises or place licensed for the sale of beer wine or spirituous liquors by retail to be consumed on the premises or for refreshment resort or entertainment under the provisions of this Act to assist in expelling drunken riotous quarrelsome and disorderly persons from such shops houses premises and places. (*q*) Expelling
drunken
persons.

As to vagrants—

Vagrants.

It shall be lawful for any person whatsoever to apprehend any person whom he shall find offending against the Vagrant Act, 1847, and convey such offender as soon as may be reasonably practicable before a justice. (*r*) The offences are :

2. Every person who shall desert or wilfully neglect to maintain his wife or any child whom he may be liable to maintain so that such wife or child shall become destitute and be relieved in or out of the workhouse of any union in Ireland. (*s*) Deserting
family.

3. Every person wandering abroad and begging or placing himself in any public place street highway court or passage to beg or gather alms or causing or procuring or encouraging any child or children to do so and every person who having been resident in any union in Ireland shall go from such union to some other union or from one electoral or relief district to another for the purpose of obtaining relief in such last-mentioned union or district. Begging ;

Section 4 of the Vagrant Act applies. (*t*)

Metropolitan.—The powers in Dublin arise under 5 & 6 Vict. c. 24 (The Dublin Police Act, 1842). By section— Metropolitan.

26. It shall be lawful for any constable belonging to the Dublin police, and for all persons whom he shall call to his assistance, to take into custody without a warrant any person who within view of any such constable shall offend in any manner against this Act, and whose name and residence shall be unknown to such constable, and cannot be ascertained by such constable. Constables
may apprehend
persons offend-
ing within
their view
whose name
and residence
are not known.

27. It shall be lawful for any constable belonging to the Dublin police to take into custody without a warrant all loose, idle, and disorderly persons whom he shall find disturbing the public peace, or whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanor, or breach of the peace, and all persons whom he shall find between sunset and the hour of eight in the morning lying or loitering in any highway, yard, or other place, and not giving a satisfactory account of themselves. (*u*) Constables
may appre-
hend without
warrant dis-
orderly per-
sons, etc.

28. It shall be lawful for any constable belonging to the said Dublin police to take into custody without warrant any person who within the limits of the police district shall be charged by any other person with committing any aggravated assault, in every case in which such constable shall have good reason to believe that such assault has been committed, although not within view of Persons
charged with
recent assaults
may be appre-
hended with-
out warrant.

(*p*) 6 & 7 Will. IV. c. 38, s. 9.

(*q*) 23 & 24 Vict. c. 107, s. 42.

(*r*) 10 & 11 Vict. c. 84, s. 4.

(*s*) See *Horley v. Rogers*, ante, p. 399.

(*t*) Ante, p. 400.

(*u*) See also 6 & 7 Will. IV. c. 29, s. 7.

By 48 Geo. III. c. 140, s. 53, all night-walkers all persons notoriously suspected of being thieves and all persons gaming or tipping in the public streets bys places or fields within the metropolitan district may be apprehended.

Sect. 28. such constable, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender.

Power to police constables to apprehend certain offenders, etc., and search vessels, etc.

29. Any person found committing any offence punishable either upon indictment, or as a misdemeanor upon summary conviction by virtue of this Act, may be taken into custody without a warrant by any constable belonging to the Dublin police . . . and every such constable may also stop, search, and detain any vessel, boat, cart, or carriage, in or upon which there shall be reason to suspect that any thing stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained.

Power to stop carts, etc., suspected of removing furniture to evade rent.

30. It shall be lawful for any constable belonging to the police force to stop and detain, until due inquiry can be made, all carts and carriages which he shall find employed in removing the furniture of any house or lodging between the hours of eight in the evening and six in the following morning, or whenever the constable shall have good grounds for believing that such removal is made for the purpose of evading the payment of rent.

Horses, carriages, etc., of offenders may be detained and sold.

31. Whenever any person having charge of any horse, cart, carriage, or boat, or any other animal or thing, shall be taken into the custody of any constable under the provisions of this Act, it shall be lawful for such constable to take charge of such horse, cart, carriage, or boat, or such other animal or thing, and to deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof may become liable, and for payment of any expenses which may have been necessarily incurred for taking charge of and keeping the same. (x)

Persons apprehended without warrant to be taken to the nearest station house.

32. Every person taken into custody by any constable belonging to the Dublin police without warrant, except persons detained for the mere purpose of ascertaining their name or residence, shall be forthwith delivered into the custody of the constable in charge of the nearest station house, in order that such person may be secured until he can be brought before a divisional justice, to be dealt with according to law, or may give bail for his appearance before a divisional justice, if the constable in charge shall deem it prudent to take bail, in the manner hereinafter mentioned. (y)

The offences are as follows—

3. [Penalty on constables dismissed, etc., for not delivering up accoutrements.]

Penalty for unlawful possession of accoutrements, or for assuming the dress of constables.

4. Every person, not being a constable of the Dublin police, who shall have in his possession any article, being part of the clothing, accoutrements, or appointments supplied to any such constable, and who shall not be able satisfactorily to account for his possession thereof, or who shall put on the dress, or take the name, designation, or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose.

Framing or producing a false bill of parcels to escape detection, a misdemeanor.

5. Every person who for the purpose of protecting or preventing any thing whatsoever from being seized within the police district on suspicion of its being stolen or otherwise unlawfully obtained, or of preventing the same from being produced or used as evidence concerning any felony or misdemeanor committed or supposed to be committed within the police district, shall frame or cause to be framed any bill of parcels containing any false statement in regard to the name

(x) As to dogs, see 2 & 3 Vict. c. 78, s. 15. (y) See s. 33.

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or abode of any alleged vendor, the quantity or quality of any such thing, the place whence or the conveyance by which the same was furnished, the price agreed upon or charged for the same, or any other particular, knowing such statement to be false, or who shall fraudulently produce such bill of parcels, knowing the same to have been fraudulently framed.

6. Every person licensed to deal in exciseable liquors within the said police district who shall knowingly supply any sort of distilled exciseable liquor to any boy or girl apparently under the age of sixteen years, to be drunk upon the premises.

Penalty on publicans supplying liquors to persons under sixteen years of age.

7. Every person who shall have or keep any house, shop, room, or place of public resort within the said police district, wherein provisions, liquors, or refreshments of any kind shall be sold or consumed (whether the same shall be kept or retailed therein or procured elsewhere), and who shall wilfully or knowingly permit drunkenness or other disorderly conduct in such house, shop, room, or place, or knowingly suffer any unlawful games or any gaming whatsoever therein, or knowingly permit or suffer prostitutes or persons of notoriously bad character to meet together and remain therein.

Penalty on persons keeping houses of public resort for permitting drunkenness, etc.

8. Every person who shall keep or use or act in the management of any house, room, pit, or other place within the said police district for the purpose of fighting or baiting lions, bears, badgers, cocks, dogs, or other animals.

Penalty for keeping places for bearbaiting, cock-fighting, etc.

14. Every person . . . who, within the limits of the police district, shall in any thoroughfare or public place commit any of the following offences; (that is to say)—

Prohibition of nuisances by persons in public thoroughfares.

1. Every person who shall, to the annoyance of the inhabitants or passengers, expose for show or sale (except in a market lawfully appointed for that purpose) or feed or fodder any horse or other animal, or show any caravan containing any animal or any other show or public entertainment; or shoe, bleed, or farry any horse or animal (except in cases of accident), or clean, dress, exercise, train or break any horse or animal; or clean, make, or repair any part of any cart or carriage, (except in cases of accident,) where repair on the spot is necessary:
2. Every person who shall turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or set on or urge any dog or other animal to attack, worry, or put in fear any person, horse, or other animal:
3. Every person who by negligence or ill-usage in driving cattle shall cause any mischief to be done by such cattle, or who shall in anywise misbehave himself in the driving, care, or management of such cattle; and also every person, not being hired or employed to drive such cattle, who shall wantonly and unlawfully pelt, drive, or hunt any such cattle:
4. Every person having the care of any cart or carriage, who shall ride on any part thereof, on the shafts, or on any horse or other animal drawing the same, without having and holding the reins, or who shall be at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same:
5. Every person who shall ride or drive furiously, or so as to endanger the life or limb of any person, or to the common danger of the passengers in any thoroughfare:
6. Every person who shall cause any cart, public carriage, sledge, truck, or barrow, with or without horses, to stand longer than may be necessary for loading or unloading, or for taking up or setting down passengers, except hackney carriages standing for hire in any place not forbidden

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by law, or who by means of any cart, carriage, sledge, truck, or barrow, or any horse or other animal, shall wilfully interrupt any public crossing, or wilfully cause any obstruction in any thoroughfare :

7. Every person who shall lead or ride any horse or other animal, or draw or drive any cart or carriage, sledge, truck, or barrow upon any footway or curbstone, or fasten any horse or other animal so that it can stand across or upon any footway :
8. Every person who shall roll or carry any cask, tub, hoop, or wheel, or any ladder, plank, pole, showboard, or placard, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :
9. Every person who, after being made acquainted with the regulations or directions which the commissioners of police shall have made for regulating the route of horses, carts, carriages, and persons during the time of divine service, and for preventing obstructions during public processions, and on other occasions herein-before specified, shall wilfully disregard or not conform himself thereunto :
10. Every person who, without the consent of the owner or occupier, shall affix any posting bill or other paper against or upon any building, wall, fence, or pale, or write upon, soil, deface, or mark any such building, wall, fence, or pale with chalk or paint or in any other way whatsoever, or wilfully break, destroy, or damage any part of any such building, wall, fence, or pale, or any fixture or appendage thereunto, or any tree, shrub, or seat, in any public walk, park, or garden :
11. Every common prostitute or night-walker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation, to the annoyance of the inhabitants or passengers :
12. Every person who shall sell or distribute, or offer for sale or distribution, or exhibit to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sing any profane, indecent, or obscene song or ballad, or write or draw any indecent or obscene word, figure, or representation, or use any profane, indecent, or obscene language, to the annoyance of the inhabitants or passengers :
13. Every person who shall use any threatening, abusive, or insulting words or behaviour, with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned :
14. Every person, except the guards and postmen belonging to her Majesty's Post Office in the performance of their duty, who shall blow any horn or use any other noisy instrument for the purpose of calling persons together or of announcing any show or entertainment, or for the purpose of hawking, selling, distributing, or collecting any article whatsoever, or of obtaining money or alms :
15. Every person who shall wantonly discharge any fire-arm, or throw or discharge any stone or other missile, to the damage or danger of any person, or make any bonfire, or throw or set fire to any firework :
16. Every person who shall wilfully and wantonly disturb any inhabitant by pulling or ringing any door bell or knocking at any door without lawful excuse, or who shall wilfully and unlawfully extinguish the light of any lamp :
17. Every person who shall fly any kite or play at any game, to the annoyance of the inhabitants or passengers, or who shall make or use any slide upon ice or snow in any street or other thoroughfare, to the common danger of the passengers :

And it shall be lawful for any constable belonging to the Dublin police to take into custody without warrant any person who shall commit any such offence within view of any such constable. Sect. 14.

15. Every person who shall be found drunk in any street or public thoroughfare within the police district, or who while drunk shall be guilty of any riotous or indecent behaviour, and also every person who shall be guilty of any violent or indecent behaviour in any police station house. Punishment of drunkards, etc., guilty of riotous or indecent behaviour.

16. Every person who shall ride upon or cause himself to be carried or drawn by any carriage within the police district, without the consent of the owner or driver thereof. Persons using carriages without driver's consent liable to a penalty.

17. Every person who in any street or public place within the limits of the police district shall be guilty of any of the following offences . . . Prohibition of other nuisances.

1. Every person who in any thoroughfare shall burn, dress, or cleanse any cask, or hoop, cleanse, fire, wash, or scald any cask or tub, or hew, saw, bore, or cut any timber or stone, or slaek, sift, or screen any lime :

2. Every person who shall throw or lay in any thoroughfare any coals, stones, slates, shells, lime, bricks, timber, iron, or other materials (except building materials, or rubbish thereby occasioned, which shall be placed or enclosed so as to prevent any mischief happening to passengers) :

3. Every person who in any thoroughfare shall heat or shake any carpet, rug, or mat, (except door mats before the hour of eight in the morning,) or throw or lay any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish, or throw or cause any such thing to fall into any sewer, pipe, or drain, or into any well, stream or watercourse, pond or reservoir for water, or cause any offensive matter to run from any manufactory, hewery, slaughter-house, butcher's shop, or dunghill, into any thoroughfare, or any uncovered place, whether or not surrounded by a wall or fence ; but it shall not be deemed an offence to lay sand or other materials in any thoroughfare in time of frost to prevent accidents, or litter or other materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things shall cause them to be removed as soon as the occasion for them shall cease :

4. Every person who shall empty or begin to empty any privy between the hours of six in the morning and twelve at night, or remove along any thoroughfare any nightsoil, soap lees, ammoniacal liquor, or other such offensive matter, between the hours of six in the morning and eight in the evening, or who shall at any time use for any such purpose any cart or carriage not having a proper covering, or who shall wilfully or carelessly slop or spill any such offensive matter in the removal thereof, or who shall not carefully sweep and clean every place in which any such offensive matter shall have been placed, slopped, or spilled ; and, in default of the apprehension of the actual offender, the owner of the cart or carriage employed for any such purpose shall be deemed to be the offender : Provided always, that this enactment shall not be construed to prevent the commissioners for paving and lighting and cleansing the streets of Dublin, within the metropolitan police district aforesaid, or any person acting in their service or by their direction, from emptying or removing along any thoroughfare at any time the contents of any sewer which they are authorized to cleanse or empty :

5. Every person who shall keep any pigstye to the front of any street or road in any town within the said district, not being shut out from such

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street or road by a sufficient wall or fence, or who shall keep any swine in or near any street, or in any dwelling, so as to be a common nuisance :

6. Every occupier of a house or other tenement in any town within the said district who shall not keep sufficiently swept and cleansed all footways and watercourses adjoining the premises occupied by him ; and if any tenement be empty or unoccupied, the owner thereof shall be deemed the occupier with reference to this enactment :
7. Every person who shall expose anything for sale in any park or public garden, unless with the consent of the owner or other person authorized to give such consent, or upon or so as to hang over any carriageway or footway, or on the outside of any house or shop ; or who shall set up or continue any pole, blind, awning line, or other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare :
8. Every person who, to the danger of passengers in any thoroughfare, shall leave open any vault or cellar, or the entrance from any thoroughfare to any cellar or room under ground, without a sufficient fence or hand rail, or leave defective the door, window, or other covering of any vault or cellar, or who shall not sufficiently fence any area, pit, or sewer left open in or adjoining to any thoroughfare, or who shall leave such open area, pit, or sewer, without a sufficient light after sunset, to warn and prevent persons from falling thereinto.

Cutting ropes, cables, etc., of vessels, a misdemeanor.

18. Every person who shall unlawfully cut, damage, or destroy any of the ropes, cables, cordage, tackle headfasts, or other the furniture of or belonging to any ship, boat, or vessel lying in the river Liffey, harbour of Dublin, or harbour of Kingstown, or in any of the docks or creeks adjacent thereto respectively, with intent to steal or otherwise unlawfully obtain the same or any part thereof.

The police shall have the power of constables upon the river Liffey, etc.; and may take into custody any person who, to prevent discovery, shall wilfully let fall any articles into the river or harbour of Kingstown.

19. Every officer and constable belonging to the Dublin police shall have all the powers and privileges of a constable upon the river Liffey within or adjoining to the said district, or the several counties of Dublin, Kildare, and Wicklow, and in and on the harbour of Dublin and harbour of Kingstown, and the docks or creeks adjacent thereto ; and it shall be lawful for any such constable to take into custody every person who, for the purpose of preventing the seizure or discovery of any materials, furniture, stores, or merchandize belonging to or having been part of the cargo of any ship, boat, or vessel lying in the river Liffey, harbour of Dublin, or harbour of Kingstown, or the docks or creeks adjacent thereto respectively, or of any other articles unlawfully obtained from any such ship, boat, or vessel, shall wilfully let fall or throw into the said river, or any of the said docks or creeks, or in any other manner convey away from any ship, boat, or vessel, wharf, quay, or landing place, any such article, or who shall be accessory to any such offence, and also to seize and detain any boat in which such person shall be found, or out of which any article shall be so let fall, thrown, or conveyed away.

Possessing instruments for unlawfully procuring and carrying away wine, etc., a misdemeanor.

20. Every person who shall be found within the police district in or upon any canal, dock, warehouse, wharf, quay, or bank, or on board any ship or vessel, having in his or her possession any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits, or other liquors, or having in his or her possession any skin, bladder, or other material or utensil for the purpose of unlawfully using, secreting, or carrying away any such wine, spirits, or other liquors, and any person who shall attempt unlawfully to obtain any such wines, spirits, or other liquor.

21. Every person who shall within the police district bore, pierce, break, cut open, or otherwise injure any cask, box, or package containing wine, spirits, or other liquors on board any ship, boat, or vessel, or in or upon any warehouse, wharf, quay, or bank, with intent feloniously to steal or otherwise unlawfully obtain any part of the contents thereof, or who shall unlawfully drink or wilfully spill or allow to run to waste any part of the contents thereof. **Sect. 20.**

22. Every person who shall within the police district wilfully cause to be broken, pierced, started, cut, torn, or otherwise injured any cask, chest, bag, or other package containing or prepared for containing any goods while on board of any barge, lighter, or other craft lying in the said river or either of the said harbours, or any dock, creek, quay, wharf, or landing place adjacent to the same, or in the way to or from any warehouse, with intent that the contents of such package or any part thereof may be spilled or dropped from such package. **Piercing casks and opening packages of wines, etc., a misdemeanor. Breaking casks and packages of goods on board barges, etc., with intent to spill contents, a misdemeanor.**

23. Any superintendent or inspector belonging to the Dublin police shall have power by virtue of his office to enter at all times with such constables as he shall think necessary, as well by night as by day, into and upon every ship, boat, or other vessel, (not being then actually employed in her Majesty's service,) lying in the said river or any of the said harbours, docks, and creeks, and into every part of every such vessel, for the purpose of inspecting and upon occasion directing the conduct of any police constable who may be stationed on board of any such vessel, and of inspecting and observing the conduct of all other persons who shall be employed on board of any such vessel in or about the lading or unlading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order on board of any such vessel, and for the effectual prevention or detection of any felonies or misdemeanors. **Superintendents and inspectors may board vessels.**

24. It shall be lawful for every superintendent, inspector, or serjeant belonging to the Dublin police, having just cause to suspect that any felony has been or is about to be committed in or on board of any ship, boat, or other vessel lying in the said river, or any of the said harbours, docks, and creeks, to enter at all times, as well by night as by day, into and upon every such ship, boat, or other vessel, and therein to take all necessary measures for the effectual prevention or detection of all felonies which he has just cause to suspect to have been or to be about to be committed in or upon the said river or harbours, docks, or creeks, and to take into custody all persons suspected of being concerned in such felonies and also to take charge of all property so suspected to be stolen. **Superintendent, etc., having just cause to suspect felony, may enter on board vessels, etc., to take up suspected persons.**

Constabulary.—These have all the powers of constables. (z) **Constabulary.**

Towns.—The powers in towns are conferred by 17 & 18 Vict. **Towns.**
c. 103 (The Towns Improvement (Ireland) Act, 1854). By section—

89. It shall be lawful for [the constabulary force stationed in such town] and all other constables to apprehend all such idle and disorderly or drunken persons as they or any of them shall find committing any breach of the peace or making any improper noise or disturbance during the night or during their watch and to detain any such persons till morning and then or if apprehended by day as soon as conveniently may be to take such person or persons before a justice. (a) **Persons idle and disorderly.**

(z) 6 & 7 Will. IV. c. 13, s. 11.

(a) As to watchmen, see 9 Geo. IV. c.

82, ss. 47, 48. As to lockups, 40 & 41

Vict. c. 49, s. 23.

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Power to impound stray cattle.

Owner to pay penalty and expenses.

Power to sell stray cattle for penalty and expenses, after notice.

Penalty on persons committing any of the offences herein named.

71. If any cattle be at any time found at large in any street of the town without any person having the charge thereof, any constable or officer of constabulary, or any person residing within the town, may seize and impound such cattle, and may detain the same until the owner thereof pay to the commissioners a penalty not exceeding twenty shillings, besides the reasonable expenses of impounding and keeping such cattle; and if the said penalty and expenses be not paid within three days after such impounding, the person appointed by the commissioners for that purpose may proceed to sell such cattle, or cause the same to be sold; but previous to such sale, then three days' notice of such intended sale shall be given by posting such notice on the constabulary barrack, pound, and other place (if any) which may be appointed by the commissioners for that purpose, and the money arising from such sale, after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, keeping, and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

72. Every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, [shall be liable to a penalty for each offence as herein-after mentioned] and any constable or other officer appointed by virtue of this Act shall take into custody, without warrant, and forthwith convey before a justice or justices, any person who within his view commits any such offence; (that is to say,)

Every person who exposes for show, hire, or sale, (except in a market or market place or fair lawfully appointed for that purpose,) any horse or other animal; or exhibits in a caravan or otherwise any show or public entertainment; or shoes, bleeds, or farries any horse or animals (except in cases of accident); or cleans, dresses, trains, or breaks, or turns loose any horse or animal; or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal: (*b*)

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state:

Every person who, after public notice given by any justice or justices at petty sessions, chief magistrate, or chairman of commissioners, directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice:

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot:

Every person having the care of any waggon, cart, or carriage, who rides on the shafts thereof; or who, without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same; or who is at such a distance from such waggon, cart, or carriage, as not to have due control over every animal drawing the same; or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road

(*b*) See 7 Ed. VII. c. 53, s. 81, *ante*, p. 400.

(except in cases of actual necessity, or some sufficient reason for deviation); or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care :

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet :

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle : (b)

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burden, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority); and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare :

Every person who causes any tree or timber, or iron beam, to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow, upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :

Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard, on any footway, or who places any blind, shade, covering, awning, or other projection over and along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground :

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandise, matter, or thing, whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway :

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon :

Every common prostitute or night-walker loitering and importuning passengers for the purpose of prostitution, or being otherwise offensive : (c)

Every person who wilfully and indecently exposes his person, or who commits any act contrary to public decency : (c)

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad : (c)

Every person who wantonly discharges any fire-arm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework ; (c)

(c) See 7 Ed. VII. c. 53, s. 81, *ante*, p. 400.

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Every person who wilfully and wantonly disturbs any inhabitant by pulling or ringing any door bell, or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp :

Every person who flies any kite, or who makes or uses any slide upon ice or snow :

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime :

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials, (except building materials so enclosed as to prevent mischief to passengers) :

Every person who beats or shakes any carpet, rug, or mat, (except rugs or mats beaten or shaken before the hour of nine in the morning) :

Every person who fixes or places any flower pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down :

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger :

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail; or leaves defective the door, window, or other covering of any vault, area, or cellar; or who does not sufficiently fence any area, pit, or sewer left open; or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto :

Every person who throws or lays any dirt, dung, litter or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, (*d*) or sea beach, or strand, within the boundaries of a town, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill, into any street: Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases :

Every person who keeps any pigstye to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance :

Every person drunk in any street, or guilty of any riotous or indecent behaviour in any street, police office, or petty sessions court, or any police station house within the town.

Entry.

Factories, etc.

Licensing.

Spirit grocer.

Entry.—The Factory, Gaming and Gun Acts apply, and the Public Health Act, 1907, as to fires. (*e*)

As to licensing, besides the enactments mentioned under the head of Arrest, there are the following :—

They may enter on the premises of a spirit grocer at any time or hour at which the house or place is kept open for the sale of spirits. (*f*) And as to

(*d*) See 7 Ed. VII. c. 53, s. 81, *ante*, p. 400.

(*e*) *Ante*, p. 418.

(*f*) 8 & 9 Vict. c. 64, s. 2.

refreshment houses and wine licenses when and so often as he or they shall respectively think proper at any time between the hours of 9 p.m. and 7 a.m. and into and upon the premises belouging thereto (*g*) and during the hours in which any house licensed for the retail of wine to be consumed on the premises may be kept open to enter into every house cellar room or place used for the storing keeping or retailing of wine to be consumed as aforesaid and to make search for and seize all spirits which may be found in any such house cellar room and place and to examine all wine kept therein. (*h*)

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Refreshment
houses.
Wine licenses.

Dublin.—For the powers of entry here see *ante*. (*i*)

Dublin.

Search and Seizure.—These officers may impound cattle stray- ing, (*k*) and where a person is arrested under the Summary Jurisdiction Act take charge of any horse, animal, cart, or carriage in charge of such person. (*l*)

*Search and
seizure.*

Dublin.—These officers may stop carts removing furniture to evade the payment of rent, and horses and carriages of offenders may be detained. (*m*)

Towns.—Cattle found straying may be impounded. (*n*)

Towns.

Bail, Chimney-sweepers, Guns, Pedlars.—The law is as in England. (*o*)

GAOLERS

Gaolers.

The powers of these officers are determined by rules. (*p*)

THE DISEASES OF ANIMALS, CRUELTY TO ANIMALS, EXPLOSIVES, FACTORIES, MINES, MERCHANT SHIPPING, RAILWAYS AND ALKALI ACTS apply. (*q*)

*Diseases of
Animals, etc.*

WATER BAILIFFS

Water Bailiffs.

The powers of these officers are contained in 5 & 6 Vict. c. 106, and the Amending Acts.

The material sections are as follows :—

By 5 & 6 Vict. c. 106 (the Fisheries (Ireland) Act, 1842)—

6. (*r*) No net or other engine covered with canvas, hide, or other material, by which unsizable and young fish may be taken or destroyed, shall be used on the sea coast, or within any estuary, except for the purpose of dredging for

(*g*) 23 & 24 Vict. c. 107, s. 20.

(*h*) S. 26. As to off beer licenses retail, see 27 & 28 Vict. c. 35, s. 6, and wholesale, s. 11, and 40 & 41 Vict. c. 4, s. 3.

(*i*) P. 587.

(*k*) *Ante*, p. 577. The Dogs Act, 1906, *ante*, p. 420, applies.

(*l*) S. 14 & 15 Vict. c. 92, s. 14.

(*m*) *Ante*, p. 582.

(*n*) *Ante*, p. 588.

(*o*) *Ante*, p. 422.

(*p*) 40 & 41 Vict. c. 49, s. 47.

(*q*) *Ante*, pp. 424–438. As to paupers, see 1 & 2 Vict. c. 56, ss. 58–60. As to inspection and destruction of infected bees, see 8 Ed. VII. c. 34, ss. 2, 3.

(*r*) For definitions see 13 & 14 Vict. c. 88, s. 1, *post*.

Sect. 6. shell fish; and every person offending by such use of any such net or engine shall forfeit the same.

No herring or other nets, save as herein provided, to be shot or left floating in the day-time.

7. No person shall, at any time between sunrise and sunset, set, either in the sea or within the tide way in any estuary, any sea net for the catching of herrings, or any trammel net, or leave any drag or other net in the water between sunrise and sunset, except stake or fixed nets for the catching of salmon, as is herein-after provided, and save also seines or drift nets for pilchards or fish other than herrings, provided such stake or fixed nets and such seines or drift nets be used at such times and places as may not be prohibited by the bye laws (s) herein-after mentioned; and every person offending by setting or leaving set any such net, save as aforesaid, shall forfeit the same.

Penalty on fishermen not hauling up their nets.

8. Every person who shall, between sunset and sunrise, have set, either in the sea or within the tideway in any estuary, any such net as is hereby prohibited from being left set or in the water between sunrise and sunset, shall before sunrise haul up and remove such net or nets; and every person offending by not so hauling up and removing such net before sunrise shall forfeit the net so set or in the water, . . . unless it shall be proved to the justice before whom complaint shall be made against such person, that he was prevented by sudden storm or stress of weather from hauling up and removing such net.

Penalty on wrongful use of trawl and trammel nets.

9. Every person who shall use any trawl or trammel net at any season or any place, either in the sea or within the tideway in any estuary, when or where the use of the same shall have been prohibited by any bye law to be made as herein-after mentioned, shall forfeit every such net so used.

Penalty on setting nets, etc., at the entrance of bays contrary to the bye-laws.

10. If any person shall set any net at or across the entrance of any bay or estuary in any place or at any time which shall be prohibited by any such bye law. (t)

13. [Bait beds may be made.] If, after the formation and planting of such new beds or banks as aforesaid, any person shall interfere with or take away any of the bait from such bank or bed, without the consent of the owner or occupier, [penalty].

Penalty on persons discharging ballast in improper places.

14. No person shall throw out or unload from any vessel the ballast thereof or any part thereof within any estuary, harbour, or place, unless where the same may be allowed by the [Board] (u) or by the local regulations of such harbour or place.

Persons possessed of a several fishery may erect stake and other fixed nets for taking salmon in any estuary, etc.

18. It shall and may be lawful for any person legally possessed of or entitled to any several fishery in or along any estuary or part of the sea coast in Ireland to fix or erect, or authorize and empower any lessee or assignee to fix or erect, within the limits and bounds of such fishery, but subject to the provisions of this Act and such regulations and restrictions as may be made by the [Board] pursuant to the powers herein-after reserved to them, any stake weir, stake net, bag net, (x) or other fixed net (y) for the taking of salmon: Provided always, that the placing or erection of such stake nets or other fixed nets as aforesaid shall not give or confer any right or title to the occupancy of the said shore (except for the purpose of attaching the said fixed nets thereto); saving to the Queen's most excellent Majesty, and all the subjects of this realm, the free and

Saving of rights of the crown and other persons.

(s) Power to make bye-laws is conferred by s. 91.

(t) By 52 & 53 Vict. c. 74, s. 3, and 1 Ed. VII. c. 38, s. 1, the Board of Agriculture may make bye-laws as to beam and other trawling. Every net used or attempted to be used in contravention of any such bye-law and every rope warp tackle beam pole iron or other matter

or thing fastened to or used with any such net . . . may be seized. See *R. v. Limerick*, 1898, 2 I. R. 135. As to mussels periwinkles and cockles, see 61 & 62 Vict. c. 28, s. 7.

(u) Of agriculture.

(x) See 26 & 27 Vict. c. 114, s. 3, *post*.

(y) See 26 & 27 Vict. c. 114, s. 4, *post*. As to free-gaps, see s. 12.

Sect. 18.

full exercise and enjoyment of all other rights of fishing, or other rights whatsoever, in or along the said sea shore or coast, or the shore of such estuary as aforesaid, subject to the provisions herein contained.

19. It shall and may be lawful for every person who shall hold and occupy as tenant in fee simple or in fee tail, or as tenant for life, or as tenant under any lease for a life or lives, or as tenant for a term of years of which not less than fourteen years shall be unexpired at the time of first erecting such net, any land adjoining the sea shore, or any estuary, not being within the limits of any such several fishery, but subject to the provisions of this Act and to such regulations and restrictions as may be made by the [Board] as aforesaid, to fix or erect such stake net or other fixed nets as aforesaid attached to that part of the shore adjoining such land: Provided always, that no tenant under any lease for a life or lives determinable, or for years, of which less than one hundred shall be unexpired, shall be empowered to fix or erect such stake nets or other fixed nets as aforesaid without the previous consent in writing of the chief landlord or lessor seised of any rent and reversion in such land; and provided also, that the placing or erection of such stake nets or other fixed nets as aforesaid shall not give or confer any right or title to the occupancy of the said shore (except for the purpose of attaching the said fixed nets thereto during such occupancy of the land as aforesaid); saving to the Queen's most excellent Majesty, and all the subjects of this realm, the free and full exercise and enjoyment of all other rights of fishing, or other rights whatsoever, in or along the said sea shore or coast or the shore of such estuary as aforesaid, subject to the provisions herein contained.

Proprietors and lessees of lands adjoining sea coast may erect fixed nets where no several fishery exists.

Saving of the right of the crown and all other persons to the use of the shore.

20. (2) No drag, stake, bag, or other net or engine for the taking of salmon, with meshes or openings of less size than two inches and a half between knot and knot or angle and angle, to be measured on each side of the square, or ten inches measured round each such mesh or opening in the clear when wet, allowing four knots or angles to each mesh or opening, nor any engine for the taking of salmon which shall be formed of wood, iron, or other rigid material, with meshes or openings of less width than three inches on each side of the square, and where no meshes or openings of the nature of reticulations shall be used of less width between the bars than two inches, shall be used on any part of the coast of Ireland, or within any of the bays, estuaries, or tide ways thereof, save and except by the proprietor of the whole of the fishery of the river flowing into such bay, estuary, or tide way, from the mouth to the source thereof, including its tributary streams; and if any person shall offend by using any such drag, stake, bag, or other net or engine, with meshes or openings of less width than aforesaid, . . . such drag, stake, bag, or other net or engine shall also be forfeited.

Size of meshes of stake, bag, or other sea net for salmon.

22. Provided always that in such parts of any estuary or the mouth or tidal part of any river, where the breadth of the channel at low water of spring tides is less than three quarters of a mile statute measure, it shall not be lawful (any thing herein contained to the contrary notwithstanding) for any person, save and except the proprietor of a several fishery in the whole of such estuary and river, to erect any such stake weir, (a) stake net, bag net, (b) fixed net, (c) or contrivance for placing or erecting a net; and that where the breadth of the

Stake and other fixed nets shall not be placed in the narrow parts of estuaries, nor in the mouths of rivers, or within one mile thereof, where breadth of same does not exceed half a mile.

(2) So much of this Act as fixes or prescribes the size of the meshes of any nets (not made of wood, iron, or other rigid materials) for the taking of salmon and trout in the sea and tideways, repealed, 8 & 9 Vict. c. 103, s. 11, *post*, p. 606.

(a) See 8 & 9 Vict. c. 103, s. 2, and 13 & 14 Vict. c. 83, s. 43, *post*.

(b) See 26 & 27 Vict. c. 114, s. 3, *post*.

(c) See 26 & 27 Vict. c. 114, s. 4, *post*.

Sect. 22. mouth or entrance into the sea of any river, the inland portion of which is frequented by salmon, is less than half a mile statute measure at low water of spring tides, it shall not be lawful for any person whatsoever (save and except the proprietor of a several fishery within the limits thereof) to place or erect any such weir or net within one statute mile seaward, coastwards, or inwards from or on either side of the mouth or entrance of any such river into the sea, the mouth or entrance of such river to be defined and determined for such purpose by the [Board]; and if any person shall offend by erecting any such stake weir, stake bag, or other fixed net, contrary to the provisions hereinbefore contained, he shall for every such offence [penalty], and shall also forfeit such weir or net; and the stakes thereof shall be ordered, by the justice imposing such penalty as aforesaid, to be pulled down or destroyed at the expense of the person so offending.

Saving for
stake weirs,
etc., established
20 years.

23. Nothing herein contained shall be construed to render illegal any stake weirs and other contrivances for placing or erecting nets which have been established for twenty years or upwards before the passing of this Act, in any estuary or portion of river within a tideway of less width than three fourths of a mile at low water of spring tides: Provided always, that nothing herein contained in regard to the period during which such weirs shall have been established or otherwise shall be construed to increase, lessen, or affect the title of any party claiming to maintain such weir, or any party disputing such title, but all parties shall be entitled to their respective rights as if this Act had not been passed, except so far as such rights may depend on any Act hereby repealed; and provided also, that such weirs and contrivances shall in all other respects be subject to and the persons using or owning the same bound by the provisions of this Act.

Stake weirs,
etc., erected
for 10 years
or upwards
within the
limits of a
several fishery
not to be
deemed illegal.

24. Nothing herein contained shall be construed to render illegal any stake weirs, ebb and flood weirs, and other contrivances for placing or erecting nets, which have been established for ten years or upwards before the passing of this Act within the limits of a several fishery, in any estuary or portion of a river within a tide way of less width than three fourths of a mile at low water of spring tides, by any person legally possessed of or entitled to such several fishery by charter, grant, patent, prescription, or Act of Parliament, in and by which such limits are accurately defined: Provided always, that such weirs and contrivances shall in all other respects be subject to and bound by the provisions of this Act.

Saving for
head weirs.

25. Nothing in this Act contained with regard to the restriction upon the erection of weirs in rivers and estuaries less than three quarters of a mile broad at low water of spring tides shall be construed to apply to that ancient description of weir commonly called head weir, not fished by means of a fixed net; but the rights of every party now legally entitled by charter or prescriptive right to the erection and maintenance of such weir shall continue the same as if this Act had not passed: Provided always, that such weir shall in all other respects be subject to and the persons using or owning the same bound by the provisions of this Act.

Stake nets
shall not
extend further
than from
high to low-
water mark,
etc.

26. No stake weir, stake net, nor any leader, out-rigger, or other work of any kind or description whatsoever connected therewith or adjacent thereto, now erected or hereafter to be erected, shall be placed or erected or suffered to remain in such a manner as that the same shall extend to a greater distance than from high-water to low-water mark of spring tides, save and except in the case of ebb and flood weirs, commonly called head weirs, not fished by means of a fixed net; nor shall any such weir be so constructed as, in the judgment of the [Board], to be capable of taking young or unsizable fish, or the fry of salmon or of any

other fish; and the nets made use of in the formation and construction of the said stake weirs or stake nets, and of the leaders of all bag or other fixed nets, shall be extended evenly, in such a manner that the meshes of the said nets shall be stretched to their full opening; and all bag nets shall be so placed and erected as that the netting of the leaders thereof can be raised and kept out of the water; and stake weirs, stake nets, and other fixed nets shall be so placed and erected as that clear openings for the free passage of fish, as herein-after provided, can be made in the pouches and traps thereof.

Sect. 26.

Further regulations as to stake, bag, and other fixed nets.

27. It shall not be lawful (d) for any person, save and except the proprietor of a several fishery within the limits thereof, at any time to shoot, draw, or use any net for taking salmon at the mouth of any river opening into the sea (the inland or freshwater portion of which river is frequented by salmon), where the breadth of such mouth between the banks thereof shall not exceed a quarter of a mile statute measure; (e) and it shall not be lawful for any person, save such proprietor as aforesaid, within such limits as aforesaid, to shoot, draw, or use any net for taking salmon within half a mile seaward, or along the coast from the mouth of any such river, such mouth to be defined and ascertained, in case of dispute, by the [Board]; and it shall not be lawful for any person, save and except the proprietor of a several fishery in the whole of a river and its tributaries, within the limits of such several fishery, to shoot, draw, or stretch nets entirely across the mouth or across any other part of any river.

Nets for taking salmon not to be used at the mouths of narrow rivers, nor to be stretched across the mouths or any other parts of rivers.

28. If any person shall resist or obstruct any persons lawfully engaged in fishing, or in proceeding to fish, or in returning from fishing as aforesaid, or shall wilfully and maliciously place any net or other engines, with intent and design to prevent fish from entering the nets of other persons set or placed in a legal manner according to the provisions of this Act, . . . every such net or other engine so placed as aforesaid shall also be forfeited.

Penalty on persons assaulting or obstructing any person fishing in a legal manner.

31. It shall not be lawful for any person whatsoever, between the tenth day of January (f) and the first day of July in any year, to hang or fix any coghill, eel, or other net or basket, or basket work, in the eye, gap, or sluice of any eel or other weir in any river, or to make use of any other fixed engine for taking eels, or, between the first day of July in any year and the tenth day of January in the year following, to keep or leave such net, basket, or other engine set, or in the water, in the eye, gaps, or sluices of such eel or other weirs, between sunrise and sunset.

Fixed nets or engines for the taking of eels shall not be set in inland rivers between 10th of January and 1st of July, etc.

32. It shall not be lawful for any person, between the first day of May and the first day of September in any year, to dredge for, take, catch, or destroy any oyster or oyster brood, save and except where the season for taking the same shall be changed by the [Board] according to the provisions herein-after contained.

Close season for oysters, 1st of May to 1st of September

33. [Board may alter the close season in any river or district, upon inquiry had, and proof that such alteration is expedient.] (g)

36. If, during the close season for salmon (h) which after the first day of January one thousand eight hundred and forty-four shall be from time to time fixed by the [Board] as aforesaid, as the close time for or in respect of any river, lake, estuary, or any part of the sea coast, (i) any person shall wilfully take or

Penalty for any person catching, taking, having in his possession, or offering for sale, salmon or trout caught in close seasons.

(d) See 13 & 14 Vict. c. 88, s. 44, and 26 & 27 Vict. c. 114, s. 24, *post*.

(e) See *Wilson v. Moy*, 19 L. R. lr. 270.

(f) See *Hosford v. Mackay*, 1897, 2 L. R. 292.

(g) By 44 and 45 Vict. c. 66, s. 1, the Board are empowered to regulate the

season for taking any species of fish including pollen. See also 26 & 27 Vict. c. 114, ss. 21 and 23, *post*.

(h) This section is to be read as if the words "or trout" were here inserted: *Declin v. Hurst*, 1897, 2 L. R. 290.

(i) As to angling, see 32 & 33 Vict. c. 92, s. 15. By s. 17 every licence to fish with

Sect. 36. fish for, or aid or assist in taking or fishing for, any salmon or trout (*k*) therein or therefrom, such person shall forfeit and pay any sum not exceeding ten pounds for every such offence, and shall also forfeit every fish so taken, and every net or engine by which the same may have been taken; and if any person shall buy, sell, or expose to sale, or have in his custody or possession, any salmon or trout so caught in such close time as aforesaid, such person shall forfeit each and every such fish, and a sum not exceeding two pounds for each such fish; and in any proceeding for the recovery of the said last-mentioned penalty proof that such person had the salmon or trout in his custody or possession during such close season shall be *prima facie* evidence that the said salmon or trout was caught during the close season as aforesaid; and if any person shall place or hang any coghill or eel nets or baskets, or other fixed modes of catching fish, in the cys, gaps, or sluices of eel or other weirs, within the periods prohibited by this Act, or to be prohibited by the [Board] in pursuance of this Act, such person shall forfeit such nets, and shall pay or forfeit a sum not exceeding ten pounds for each such net; and if any person shall hang or set, or leave hung or set, such nets as last aforesaid, between sunrise and sunset, within the periods allowed for the said fishery, such person so offending shall forfeit the said nets, and shall pay or forfeit a sum not exceeding five pounds for each such net; and in any proceedings against any person for the recovery of any penalty incurred by violation of the provisions aforesaid, proof that such person is the occupier of such weir shall be *prima facie* evidence that the said nets were hung or set, or left hung or set, by him; and if any person shall dredge for, take, catch, or destroy, have in his possession, sell, or buy, any oysters or oyster brood within the period prohibited by this Act, or within the period to be prohibited by the [Board] in pursuance of this Act, such person shall forfeit such oysters, and forfeit and pay a sum not exceeding five pounds for each offence; provided that nothing herein contained shall be construed to prevent the proprietor of any oyster bed, or any person deriving under him, from removing or laying down oyster brood during such close season. (*l*)

Penalty for hanging eel nets, etc., at unlawful times.

Penalty for catching, etc., oysters during close season.

All machinery, nets, and tackling for the taking of salmon, etc., in salmon weirs, or other fixed engines, shall be wholly removed during close season.

Penalty for neglect.

37. During the close season for salmon, or which shall be fixed as aforesaid by the [Board], every occupier or farmer of any fishery shall remove and carry away or cause to be removed and carried away, from such fishery, and the weirs, dikes, and dams connected therewith, and from the river or stream in which such weirs, dikes, or dams are placed, and from the landing places adjoining thereto, all and every engine, spear, hand net or other net, inseale, hecks, and rails of all cruives, boxes, or cribs, used for the purpose of taking or killing salmon, and the tops of such cruives, boxes, or cribs, and all planks and temporary engines and fixtures used and required for the fishing of the same; and all and every obstruction to the free passage of the fish in and through each and every such cruive, crib, or box shall be wholly removed and carried away within thirty-six hours after the expiration of the open season so fixed as aforesaid, and shall not be again placed or allowed to be placed or to remain therein until within thirty-six hours of the commencement of such open season; and in case any such occupier or farmer shall omit or neglect so to remove all and every such net, engine, or other tackle, contrivance, or obstruction as aforesaid, and to keep the same apart from the said fisheries during the time aforesaid, or

rod and line must contain the name and address of the person licensed, and is not to be transferable. Every person fishing with single rod and line without a licence is subject to same penalty as is provided by 13 & 14 Vict. c. 88, for using illegally

any engine net instrument or device. See this Act, *post*.

(*k*) See 13 & 14 Vict. c. 88, s. 45, *post*.

(*l*) See also 29 & 30 Vict. c. 88, s. 2; c. 97, s. 13, and 47 & 48 Vict. c. 43, s. 12, which last extends to mussels.

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shall neglect to maintain and keep such cribs, boxes, or cruives free from all obstructions to the passage of fish during the time aforesaid, he shall forfeit all such nets, engines, or other tackle or contrivance as aforesaid, . . . Provided always, that nothing herein contained shall be construed to render liable to any penalty any person who shall be prevented by floods, storm, or stress of weather from removing any such net, engine, or tackle during the continuance of such prevention; and provided also, that the proprietor or farmer of any salmon weir now legally entitled by patent, charter, or otherwise to a right of fishing for eels in such weir, and who has exercised such right previous to the passing of this Act, shall not be liable to any penalty on account of his placing, hanging, or using coghill or eel nets or baskets in the eyes or gaps of such weir, if such coghill or eel nets or baskets be only used in conformity with the provisions of this Act, and he only hung in four fifths in number of the eyes or gaps of such weir, and other one fifth of such eyes or gaps, in addition to the Queen's or free pass, be kept open and unobstructed for the free passage of all kinds of fish, as herein provided; and provided also, that nothing herein contained shall be construed to exempt such proprietor or farmer from liability to the penalties by this Act directed in case any salmon or trout shall be killed, taken, or caught in such weir during close season, or in case he shall not keep open and unobstructed, according to the provisions of this Act, one fifth in number, as aforesaid, of the eyes or gaps of the said weir.

38. During the close season for salmon which shall be fixed by the [Board] as aforesaid, every proprietor, lessee, or other person who shall be engaged in fishing for salmon by means of fixed engines, shall remove and carry away, or cause to be removed and carried away, from the poles or fixtures to which they shall be attached, all stake nets, bag nets, sole nets, fly nets, or other devices or engines used for the purpose of taking salmon, except where such nets, devices, or engines shall be formed of wood, iron, copper, or other rigid substance, in which case a clear opening of four feet in width shall be made and maintained in and completely through the pouches, traps, or chambers of all such nets, devices, or engines, from the top to the bottom of such pouches, traps, or chambers, and in the eyes of flood and ebb weirs, commonly called head weirs, so as to allow the free passage of salmon and other fish through the same, and effectually to prevent the catching or taking of any fish therein; and in case any such person shall omit or neglect to remove or carry away all such nets and engines, or, as the case may be, to make and maintain free from all obstruction such openings as aforesaid, during the times aforesaid, he shall forfeit all such nets or engines . . . Provided always, that nothing herein contained shall be construed to render liable to any penalty any person who shall be prevented by storm or stress of weather from removing such nets or engines, or making such openings as aforesaid, during the continuance of such prevention.

All bag, sole, fly, or stake nets and other engines for catching salmon in the tide way shall be removed during close season.

Penalty.

39. It shall be lawful for all persons now legally entitled by charter or prescriptive right to the use of such weirs (m) to continue to use them for the purpose of catching white fish, notwithstanding its being the close salmon season, provided they obtain the licence of the [Board] to do so; . . . Provided, however, that all such weirs shall be subject in all other respects to the provisions of this Act, and to such bye laws and regulations as may be made in regard to them by the [Board], pursuant to the powers reserved to them in this Act.

Saving for weirs to catch white sea fish.

40. (n) It shall not be lawful, in inland lakes or rivers, to take, kill, or fish

Salmon or trout not to be taken in any traps, nets, or

(m) In the tide ways of certain rivers. *post*, p. 613. And also 13 & 14 Vict. c. 88, (n) See 26 & 27 Vict. c. 114, s. 20, s. 46, *post*.

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fixed engines
from six o'clock
on Saturday
evening to six
o'clock on
Monday
morning.

Netting of
leaders of bag
nets, etc., to
be removed,
during that
time.

A free passage
of four feet
wide to be left
during that
time through
each crib or
trap for taking
salmon, etc.

Spur and tail
walls not to be
more than
twenty feet
long above or
below the walls
of fishing
weirs, etc.

Saving as to
weirs, banks,
or heads used
for sustaining
mills and
navigation.

for any salmon or trout in or by any crib, box, cruiwe, eye, sluice, or gap in any eel or other weir or dam, or by any nets, of what nature or kind soever, (o) between six of the clock on Saturday evening and six of the clock on Monday morning; and it shall not be lawful, in the sea or any estuaries or tide ways, to take, kill, or fish for any salmon or trout in or by any stake, flood, ebb, or head weir, stako net, bag net, fixed net, or other net whatsoever, between the low water next in point of time before six of the clock on Saturday night and the low water next in point of time before six of the clock on Monday morning, but in each of such stake, flood, ebb, or head weir, and stake net, a clear opening of at least four feet in width shall be made, and kept free from obstruction, in the pouches, traps, chambers, or eyes of the same, from the bottom to the top thereof, so as effectually to allow of the free passage of salmon and other fish through such pouches, traps, chambers, and eyes during such weekly close time; (p) and the netting of the leader of each and every such bag, fly, sole, or other fixed net of similar construction, shall during such time be raised and kept out of the water; and also in all rivers, lakes, and tideways all other nets and baskets whatsoever, except those used for the taking of eels, shall be wholly removed and taken out of the water for and during the space of time above mentioned; and the inseales or gates and rails or framework of all such cribs, boxes, or cruiwes for the catching of salmon, or other fish of the salmon kind, shall be removed out of or opened in each such crib, box, or cruiwe, eye, sluice, or gap. in every salmon or other weir wherein salmon may be caught, in such a manner that a clear opening of not less than four feet in width from the bottom to the top of each such crib, box, or cruiwe shall be left therein, and that a free, direct, and uninterrupted space or opening of the said width shall be effectually secured for the passage of fish of all kinds, both up and down, through such boxes, cribs, or cruiwes. (q)

54. It shall not be lawful to construct or attach to, or permit to remain if already constructed or attached to, any cruiwe weir or cruiwe dam used for fishing in any river, any spur or tail wall, leader or outrigger, of any kind or description whatsoever, of a greater length than twenty feet from the upper or lower side respectively of the walls or piers of such weir or dam, except the wall or leader connecting the cribs of such weir or dam with the bank of the river; nor shall any such wall or walls, leader or outrigger, be so built or constructed as to narrow up or prevent the ingress and discharge of the water through or from the free opening or Queen's share in such river or stream; nor shall any island or natural formation in any river be so made use of as to secure the proprietor of any fishery the same advantage which such proprietor would have obtained by the erection of a tail wall of greater length than twenty feet; nor shall any such walls or leaders be constructed or suffered to remain in narrow rivers or other places of a greater length than the [Board], upon application made to them for that purpose, shall determine and approve, anything in this Act contained to the contrary thereof in anywise notwithstanding; [penalty].

55. Provided always that nothing herein-before contained respecting the making or maintaining such free gap (r) or Queen's share, or the length of such spur or tail walls, or such island or natural formation, shall be construed to extend to weirs, banks, or heads used for sustaining a supply of water to mills, factories, or navigation, so as injuriously to affect the necessary supply of water

(o) Does not apply *semble* to moveable nets such as snap nets: *Grant v. Corcoran*, 1. R. 2 C. L. 317.

(p) This is a continuous obligation on the part of the occupier: *Fitzgerald v.*

Hosford, 1900, 2 I. R. 391.

(q) See 26 & 27 Vict. c. 114, s. 11, and s. 25, *post*.

(r) See 26 & 27 Vict. c. 114, s. 9, *post*.

thereto, if such weirs, banks, or heads shall not be made use of for the purpose of taking salmon or other fish in any manner whatsoever **Sect. 55.**

56. Provided always that if any weir, dam, or bank used for sustaining a supply of water to mills, factories, or navigation shall be, by virtue of Act of Parliament, charter, or prescription, legally used for the catching of salmon or other fish, nothing herein-before contained respecting the making or maintaining a free gap or Queen's share, or the length of such spur or tail walls, shall be construed to extend to such weir, dam, or bank, so as injuriously to affect the necessary supply of water to such mill, factory, or navigation. Saving for mill weirs legally used for fishing.

57. No person or persons shall fish with rod and line or in any other manner in any part of such free gap or Queen's share in any weir in any river, or hang, fix, set, or use, within the space of fifty yards above or below any part of such weir, any net, basket, or other engine whatsoever for the taking of fish, or in order to deter or prevent fish from going up or down the same, or place any obstruction, or throw any gravel, elay, stones, or other matter into the same, nor shall beat the water, or place or set any bridge, board, cloth, or any other thing whatsoever in, over, or across the same (save and except a temporary bridge or board during the time only when the persons engaged in the fishing of the said weir shall be passing over the same), nor shall in any manner prevent the free and uninterrupted passage of fish through the same at all periods of the year [penalty]; and all such obstructions shall be forthwith removed at the expense of such person upon the order of the justice imposing such penalty as aforesaid; and in any proceeding against any person for the recovery of any penalties incurred by violation of the provisions aforesaid, proof that such person is the occupier or owner of such weir shall be taken as *prima facie* evidence that such obstructions were placed by him. No obstructions shall be placed in, over, or near the Queen's share, nor shall any person fish in or near the same.

58. Every box, erib, or cruive (s) used for the taking of salmon shall be so constructed that the upper surface of the sole or bottom thereof shall be level with the natural bed or channel of the river; and the incales of every box, erib, or cruive shall be so constructed that no part of the bars thereof shall approach nearer to each other than two inches, and that the same shall be capable of being removed; and during the weekly close period such incales shall be opened the full width of four feet, and during other close periods such incales shall be wholly taken out, so that the space within the box shall present no obstruction or obstacle whatever to salmon passing through such box, erib, or cruive; and the bars or rails of such incales, and of the heck or the up-stream side of the box or erib, shall be so constructed that no part of the rails thereof shall approach nearer to each other than two inches; and such up-stream rails shall be placed perpendicularly, and during the weekly close time be either entirely removed and taken out, or so opened or fastened back that a space of four feet shall be completely free and clear in each such box, erib, or cruive; [Board] authorized from time to time to make orders or regulations with respect to the formation and structure of such boxes or eribs, or other fixed engines for catching salmon, as shall be deemed expedient and necessary to suit any improved methods proposed to be adopted . . . Provided always, that in all cases in which the principal or a considerable part of the value of any weirs has hitherto consisted in catching trout, [Board] authorized from time to time to regulate and make orders for the regulation of such weirs, and of the boxes, eribs, and cruives therein, so as to lessen the space between the incales and rails thereof respectively to such space as shall be fit and proper for the catching of trout. Regulations as to cribs, cruives, or boxes for the taking of salmon, etc.

59. [Board may enforce by warrant the construction of fixed weirs, etc., in conformity with the provisions of this Act.]

(s) See 26 & 27 Vict. c. 114, s. 10, *post*.

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Nothing herein contained to legalize any weir not otherwise lawful.

60. [Board need not do more than open the passages required by this Act, and shall not be liable for consequential damages.]

61. Provided always that nothing herein contained shall be construed to give any right whatsoever to any person to erect or maintain any weir, dam, or leader which is or shall be an obstruction or hindrance to the navigation of any river, or to the free and uninterrupted discharge of the waters of the same, either for the purpose of draining the lands adjoining thereto, or of improving the water power thereof for the use of mills or factories; nor, except as hereinbefore provided with respect to stake and fixed weirs, shall any thing herein contained tend to legalize any weir now or which may be hereafter erected, for the erection of which a good, sufficient, and valid title in the law does not exist.

62. [Natural obstructions in rivers may be altered or removed by the Board to allow of free migration of fish.] Provided always that such works or alterations in the bed of such river or rivers shall not be made in such a manner as to injure the effective power of any mill or factory, or in any way to impede or interrupt the drainage of lands adjoining such river; and provided also, that reasonable compensation be made by the parties applying (*t*) for any damage or injury done or to be done or suffered consequently or otherwise in the execution of such works.

In all dams or weirs which shall be hereafter constructed, means shall be provided for the free migration of salmon and other fish.

63. Every dam, weir, dyke, or other erection, which shall after the passing of this Act be placed in or across any river frequented by salmon, for sustaining the water of such river for mill power, navigation, irrigation, or other purposes, shall be so built or constructed as to permit and allow of, in one or more parts of the same, the free run or migration of salmon, trout, and other fish at all periods of the year, and such provision for the free passage (*u*) of the fish through such dam, weir, or dyke as aforesaid shall be made at the expense of the person forming such dam, weir, or dyke, and in such manner as the [Board] shall approve; and with respect to weirs, dams, or dykes at present erected in or across rivers frequented by salmon, for sustaining the water of such river for mill power, navigation, irrigation, or other purposes, it shall be lawful for the [Board], if they shall deem it fit and necessary for the benefit of the fisheries thereof, on the application of one or more of the persons interested in the fishery of such river wherein the same shall be placed, and at the proper costs and charges of the persons interested in such fishery as aforesaid, to cause a survey of the said dam, weir, or dyke to be made by some competent engineer or surveyor, and to direct such alterations to be made therein, or such additional work to be added thereto, as shall in the opinion of the [Board] be necessary and desirable, for the purpose of affording a free and uninterrupted passage to the fish frequenting such river, without impairing the navigation or lessening or impairing the effective working power of the mill or factory to which such dam, weir, or dyke belongs; and the owners or occupiers of all such mills or factories are hereby directed and required, at any time or times during which such mill or factory shall not be at work, or when the water-wheel or water-courses thereof shall not be undergoing such repairs as shall require the water above such mill to be run off, to stop and close up in dry seasons all other waste gates or overfalls, so as to direct and force the surplus water of such river or stream through the passage so prepared as aforesaid for the migration of salmon, trout, and other fish; [penalty]. Provided always, that the sluices which admit the water to the wheels of all mills or factories which derive their supply from rivers frequented by salmon shall at all seasons of the year be kept shut for twenty-four consecutive hours in each week, between the hours of six

In existing dams and weirs similar means for migration of fish shall be provided, no injury being done to navigation or power of mills.

Provisions for securing a supply of water through the passage for the migration of fish.

(*t*) *I.e.* interested in the fishery.

(*u*) See 26 & 27 Vict. c. 114, s. 9, *post*.

o'clock on Saturday afternoon and six o'clock on Monday morning, so that the water may be allowed to flow freely through any existing gap in such weir, dam, or dyke, or any passage formed as aforesaid, or, where no such gap exists or passage shall be formed, through the waste gate on the up-stream side of the wheel sluices of such mill or factory, if such waste gate shall be erected in a channel suitable for the passage of fish; and provided that by the opening of such waste gate the mill shall not be thereby deprived of the necessary supply of water for the full and efficient working of the same; [penalty].

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64. It shall not be lawful for any person to take, kill, or destroy any salmon or other fish, or hang, fix, use, or set, in any such passage so made as aforesaid in or through such natural obstructions, mill dams, (w) weirs, or other similar works, any net,asket, or other engine or contrivance whatsoever for the taking of fish, or to place any obstacle or contrivance of any nature or kind soever in or near thereto, in order to deter or prevent fish from freely entering or passing up and down through the same at all periods of the year, but such passage so made as aforesaid shall be kept and preserved free from every obstruction, and all such obstructions shall be removed in like manner as is herein-before provided with regard to the free gap (x) or Queen's share in fishing weirs; [penalty].

Free passage for migration of fish in natural obstructions or in dams shall be preserved in like manner as Queen's share in fishing weirs.

65. In the inland and freshwater portions of rivers and lakes in Ireland, no person, save the owner of a several fishery within the limits thereof, shall, at any period of the year, lay, draw, make use of, or fish with haul, draft, seine, or other net for the taking of salmon or trout, unless in cases when a general public right of fishing for salmon with such nets, in the nature of a common of piscary, has been enjoyed for a space of twenty years next before the passing of this Act; and if any person shall offend contrary hereto, such person so offending shall forfeit all such nets so used. . . .

No person to use nets for the taking of salmon in inland rivers where no several fishery exists.

66. (y) No person shall, in the freshwater portion of any inland river or lake, lay, draw, make use of, or fish with (save as herein otherwise provided) any haul or draft net or seine, the meshes whereof shall be under two and a quarter inches from knot to knot measured on the side of the square, or nine inches measured all round in the clear when wet, allowing to each mesh four knots; and no person shall make use of or fish with any such net formed with a false bottom (except nets for the taking of eels), or shall place two or more nets one behind the other, or use any nets covered with canvas, hide, or other substance, for the purpose of taking small fish, or shall affix or keep up continued nets stretched across any river; and no person shall lay, draw, make use of, or fish with any nets within the limits of any several fishery without a licence in writing from the owner or renter of such fishery; and no person shall place, affix, or attach any nets to any stakes, bridges, sluices, lock gates of canals, or other such fixed erections, or shall lay, draw, or fish with any nets whatsoever, except nets for the taking of eels as by this Act provided, within the close season for salmon, which after the first day of January one thousand eight hundred and forty-four shall be fixed by the [Board] as aforesaid, or at any season of the year between six of the clock on Saturday evening and six of the clock on Monday morning; and if any person shall offend in any of the cases aforesaid, he shall forfeit every net used in doing or committing such offence, . . .

Size of meshes of nets in inland rivers and lakes.

Regulations as to such nets and their use.

67. [Board may authorize different form of nets and size of mesh in the inland rivers and lakes upon due inquiry had.]

(w) See 26 & 27 Vict. c. 114, s. 44, *post*.

(x) *Ibid.*, s. 9, *post*.

(y) So much of this Act as fixes or pre-

scribes the size of the meshes of all nets to be used in the inland and freshwater portions of rivers, rep., 8 & 9 Vict. c. 108, s. 11, *post*.

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Penalty for using unlawful nets.

Regulations as to angling.

Cross lines prohibited.

Penalty on persons entering lands to fish without permission.

Penalty for taking or using boats without permission.

Penalty for having, taking, or attempting to take, etc., fry and spawn of salmon, trout, or eels.

Penalty for having, taking, or offering for sale, any unclean or spent fish.

Penalty for any person taking or attempting to take fish, or the fry of fish, in works appurtenant to mills or factories, or in watercourses diverted from rivers for such purposes.

A grating shall be placed in all watercourses diverted from rivers to prevent salmon, trout, or fry entering therein.

68. If any person shall hang, draw, or make use of any net of any description prohibited by this Act, or the use whereof shall from time to time be prohibited by the [Board], the person so offending shall forfeit such net. . . .

69. Provided always that nothing in this Act contained shall be construed to hinder or prevent the proprietors of any lands adjoining any lake or river, and not being within the limits of a several fishery, or any person authorized by them, from taking, catching, or fishing for salmon, trout, and other fish with rods and lines in any such lake or river : Provided always, that no person shall angle for salmon or trout in any lake or river during the close season prescribed by any Act now in force in Ireland.

70. It shall not be lawful for any person (save the proprietor of a several fishery, or any person duly authorized by him in writing, within the limits thereof,) to take, catch, or fish for any salmon or trout by means of cross lines in any river. . . .

71. If any person or persons shall enter upon any lands or premises for the purpose or under the pretence of fishing or angling in any lake, river, stream, pond, or water, without authority in writing from the proprietor or occupier of such lands or premises [penalty].

72. If any person or persons shall remove, take, use, or employ any cot, barge, boat, (z) or vessel, without permission of the owner thereof [penalty].

73. If any person shall wilfully take, sell, purchase, or have in his possession (a) the spawn, smolts, or fry of salmon or of trout or of eels, or in any way or by any device wilfully obstruct the passage of the said smolts or fry, or injure or disturb any such spawn or fry, or any spawning bed, bank, or shallow where the same may be [penalty]; and all nets, engines, and devices used in the taking of the same, or whereby any such injury shall be caused, shall be forfeited.

74. If any person shall at any time wilfully take, kill, destroy, expose to sale, or have in his possession any red, black, foul, unclean, or unseasonable salmon or trout [penalty]: Provided always, that if any person shall take or catch any such fish accidentally, and return the same immediately to the water without injury, such person shall not be liable to the penalty aforesaid.

75. If any person shall, at any season of the year, in any mill pool or mill dam, or in any works appurtenant to any mill or factory, or in any of the watercourses leading the water to or from such mill or factory, place, lay, set, or draw any net, grate, creel, or other engine, or use any means or device whatsoever, (save and except rod and line used subject to the provisions of this Act,) for the purpose of taking, destroying, or obstructing any salmon or other fish, or the fry thereof, every such person so offending [penalty], shall also forfeit such nets or other engines.

76. In all watercourses, cuts, channels, or sluices constructed for the purpose of conveying water from any river frequented by salmon, for the supply of towns, the irrigation of lands, or any purpose other than the supply of water for navigation, or as a moving power for machinery, (b) or for fish ponds, there shall be placed and fixed by the occupier of such watercourses, cuts, channels, or sluices, at their points of divergence from and return to such river, and above and below

(z) The owner must be in undisputed possession: *R. v. Kerry*, 12 L. R. Ir. 384.

(a) As to pollen, see 54 & 55 Vict. c. 20, s. 3, *post*.

(b) Exemption from compliance with the provisions of this section in the case of moving power for machinery shall ex-

tend only to such cases in which and for such periods during which it shall be proved to the satisfaction of the Board that such exemption is necessary for the effective working of any such machinery: 32 & 33 Vict. c. 9, s. 4.

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such sluices, a grating or lattice (the space between the bars whereof shall not exceed two inches in any place), extending across the whole width of such watercourse, cut, channel, or sluices, and from the bottom of the bed or sill thereof respectively to the level of the highest winter or flood waters; and during the months of March, April, and May, and such other periods of the year as the brood or fry of salmon or trout shall be descending the rivers, (c) there shall be placed or stretched over the entire surface of such grating a wire lattice or network of such dimensions as effectually to prevent the admission of salmon fry or other small fish into such watercourses, cuts, channels, or sluices; and the owner, lessee, or occupier of any such premises to which such watercourse leads, or other person making or using or having the care and maintenance of any such watercourse, cut, channel, or sluice, shall secure and fix the said grating, lattice, or wire-work in a permanent manner, so as to prevent the same from being removed or opened, and shall keep and preserve the same in constant repair [penalty].

77. If the proprietor or tenant of any eel weir shall take or suffer to be taken therein any salmon or trout, or salmon or trout fry, or spent salmon [penalty].

Penalty for taking salmon or trout, or their fry, in eel weirs.

78. If any person shall between sunset and sunrise, have or use any light or fire of any kind, or any spear, gaff, strokeall, or other such instrument, with intent to take salmon or other fish in or on the banks of any lake or river, or if any person shall be found at any time chasing, injuring, or disturbing spawning fish or fish on the spawning beds, or attempting to catch fish in such places (except with rod and flies only, within the lawful period), or damming or teaming or emptying any river or mill race for the purpose of taking or destroying any salmon or trout, or the fry thereof, every person so offending in any of the cases aforesaid shall forfeit all such instruments. . . .

Penalty for attempting to take salmon, trout, etc., at night in inland rivers, etc., or using lights, etc., for such purposes.

79. If any person shall kill, take, or destroy any carp, tench, bream, roach, perch, eel, pike, trout, cray-fish or any other fish, in or out of any pond, private canal, or reservoir, wherein the same are kept, and wherein he has no property, without the consent or licence of the owner of such pond, private canal or reservoir [penalty].

Penalty for fishing in private ponds.

80. No person (d) shall throw, empty, or cause to run or flow into any river or lake any dye stuff or other deleterious or poisonous liquid, or shall throw into such river or lake any lime, spurge, or other deleterious or poisonous matter, or shall steep in such river or lake any flax or hemp [penalty]: Provided always, that nothing in this Act contained shall extend or be construed to render any person liable to the penalties hereby imposed for casting into any river or stream any dye stuffs or other materials which are not of a deleterious nature, or which are not in a state poisonous to fish or other animals using the waters thereof.

Penalty on persons throwing or allowing the flow of matters poisonous to fish into inland rivers.

81. Every boat, cot, or curragh shall have upon some conspicuous part thereof the name of the owner, or of one of the owners where more than one, and of his place of residence, painted in clear legible characters or letters of not less than two inches in length [penalty].

The names of owners shall be painted on fishing boats.

82. [Proprietors of fisheries in rivers or on the coast may appoint water bailiffs to protect the fisheries of the river or lake in which they are interested.]

83. If any person shall act as a water bailiff without having an appointment confirmed as aforesaid by the justices (e) and unrevoked by them [penalty].

Penalty for acting as water bailiff without authority of justices.

84. Every water bailiff appointed as aforesaid shall be empowered to exercise the powers and authorities of a constable for the enforcement of the provisions of

Powers of water bailiffs

(c) See 26 & 27 Vict. c. 114, s. 30, *post*.

must be deleterious at the moment of entry: *R. v. Antrim*, 1906, 2 I. R. 298.

(d) Includes a corporation. The matter

(e) Under s. 82.

Sect. 84.

for the protection of the fisheries.

this Act, and shall be at liberty at all times and seasons, without any let or hindrance whatsoever, to enter into and pass through or along the banks or borders of any lakes or rivers frequented by salmon or trout, or of the tributaries thereof, for the protection of the fisheries whereof he shall be so appointed as aforesaid, and with boats or otherwise to enter upon all and every such lakes or rivers, and to enter upon and examine (*f*) all weirs, sluices, mill dams, mill races, and watercourses communicating therewith, and to pass along the same, and to enter any boat or boats engaged in fishing, and to examine all standing, floating, and other nets whatsoever, and to seize all illegal nets, engines, and devices whatsoever, and all and every other nets, engines, and instruments whatsoever when used illegally, (*g*) and to do all such other acts and things as he shall be required to do by the byelaws of the [Board], or by any warrant issued by any justice or justices in conformity with the provisions of this Act; and the production of such certificate or appointment, endorsed as aforesaid, shall be sufficient warrant for such water bailiff so acting in any of the cases aforesaid: Provided always, that nothing herein contained shall be construed to authorize any such water bailiff to enter any garden enclosed with a wall or paling, nor any dwelling house or the curtilage thereof, (except where the ordinary road or passage to any weir, dam, or dyke shall be through any such garden or curtilage as aforesaid,) save when thereunto authorized by the warrant of a justice of the peace as herein-after provided. (*h*)

85. [Justices may grant a warrant to enter suspected places.]

86. [Officers and men of her Majesty's cruisers, and officers and men of coast guard service, may enforce provisions of this Act. Officers and men of the coast guard may act as constables.] (*i*)

Offenders may be apprehended if they refuse to tell their names, or to desist from the offence.

87. When any person shall be found, at sea, or on rivers, lakes, or other waters, or on land, offending against any of the provisions of this Act by the use of any illegal net, engine, or device whatsoever for the taking of fish, or by the use of any net, engine, or device prohibited at such time, or in any other manner, it shall be lawful for any officer or person herein-before empowered to enforce the provisions of this Act, or for any person interested in the fishery in which such illegal act may be committed, to require the person so found offending forthwith to desist from such offence, and also to tell his christian name, surname, and place of abode; and in case such person shall, after being so required, refuse to tell his real name or place of abode, or shall give such a general description of his place of abode as shall be illusory for the purpose of discovery, or shall wilfully continue such offence, it shall be lawful for the officer or person so requiring as aforesaid, and also for any person acting by his order and in his aid, to apprehend such offender, and to convey him or cause him to be conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law: Provided always, that no person so apprehended shall on any pretence whatsoever be detained for a longer period than twenty-four hours from the time of his apprehension before he shall be brought before some justice of the peace; and that if he cannot, on account of the absence or distance of the residence of any such justice of the peace, or owing to any other reasonable cause, be brought before a justice of the peace within such twelve (*j*) hours as aforesaid, then the person so apprehended shall be discharged, but may nevertheless be proceeded against for his offence by summons or warrant, according

(*f*) See 26 & 27 Vict. c. 114, s. 31, and 54 & 55 Vict. c. 20, ss. 5, 6 & 7, *post*.

(*g*) By s. 103 they may be retained to be brought before the magistrates.

(*h*) As to constabulary, see 7 & 8 Vict. c. 108, ss. 1, 2.

(*i*) See 52 & 53 Vict. c. 74, s. 3.

(*j*) *Sic*.

to the provisions hereinafter mentioned, as if no such apprehension had taken place. (k) Sect. 87.

88. Where any persons, to the number of three or more together, shall be found by any officer of her Majesty's navy, or of the coast guard, or any water bailiff or peace officer, by violence, intimidation, or menace impeding or obstructing, or attempting to impede or obstruct, any other person or persons in the lawful prosecution of any fishery, it shall be lawful for such officer of the navy or coast guard, or water bailiff or peace officer so requiring, (j), and also for any person acting by his order or in his aid, to apprehend such offenders, and to convey them before a justice of peace, to be dealt with according to law. Penalty on persons using violence to impede lawful fishing.

89. It shall be lawful for the [Board], or any officer appointed by them for the purposes of this Act, to use and exercise all and every the powers and authorities for enforcing the provisions of this Act and the apprehension of offenders by this Act conferred upon the officers of her Majesty's cruisers and of the coast guard stations and water bailiffs respectively. Board, etc., may apprehend offenders.

90. If any person shall assault, resist, or obstruct any of the [Board], or any person acting by their authority, or any officer of her Majesty's navy or coast guard, or any person acting under him or them, or any water bailiff, in the execution of any of the powers conferred on him or them by this Act, or by any rule, order, or byelaw, to be made in pursuance of this Act as aforesaid, or if the master of any fishing vessel shall refuse to produce his certificate of registry when thereunto required by any such [Board], officer, or person [penalty]. Penalty on opposing or assaulting commissioners, etc., in execution of this Act, etc.

By 8 & 9 Vict. c. 108 (The Fisheries (Ireland) Act, 1845)—

2. If any person shall after the twentieth day of August one thousand eight hundred and forty-five fish with or use any stake weir, stake net, bag net, fixed net, or any contrivance for placing or erecting any net or engines, which under the provisions of the said first-recited Act (l) are prohibited to be placed or erected in any part of any estuary or the mouth or tidal part of any river where the breadth of the channel at low water of spring tides is less than three quarters of a mile statute measure, or which are prohibited to be placed or erected within the space of one statute mile seaward, coastwards, or inwards from or on either side of the mouth or entrance of any river into the sea, the inland portion of which river is frequented by salmon, and the breadth of which mouth, as now or hereafter to be defined by the [Board], is less than half a mile statute measure at low water of spring tides [penalty]. The use of illegal weirs and nets to be subject to the same penalties as the erection thereof.

3. [Board may suspend the use of and by warrant remove illegal weirs and nets in places prohibited.]

9. [Board, on defining distances from mouths of rivers, may define also the distances within which weirs, etc., are prohibited.]

10. It shall and may be lawful for all officers and men of the navy or coast guard service, and of the constabulary, and for any person appointed by or acting under the authority of the [Board], when and as often as they or any of them shall, in any fishing weir, net, or contrivance, during the weekly or other close time or season, (as fixed under the provisions of the said first-recited Act,) find any passage shut, closed, or obstructed, or during such close time in any place find any net or other contrivance placed or used where the same are now by law or may hereafter be prohibited by the [Board], in pursuance of the powers in them vested, or shall at any time find any obstruction in the Queen's share or free gap through or over any fishing or other weir, or in the sluice Additional powers for enforcing observance of the weekly and other close times.

(k) See *Wilson v. Moy*, 19 L. R. Ir. 270; *Hooford v. McAuliffe*, 1903, 2 L. R. 1. (l) 5 & 6 Vict. c. 106. See s. 22, *ante*, and 13 & 14 Vict. c. 83, s. 43, *post*.

Sect. 10. passages appurtenant to any mill or factory at any time when the sluice gate of same shall be open, then and so often to open such passages and remove all such obstructions, doing no unnecessary damage, and to seize and remove all nets or parts of nets which may be found so as aforesaid placed or used contrary to the provisions of the said first-recited Act or this Act : Provided always, that nothing herein contained or done in pursuance of the same shall exempt any person from the penalties and forfeitures in and by the said first-recited Act prescribed in respect to any of the matters aforesaid; and provided also, that none of the parties or persons hereby authorized to open such passages or remove such nets or obstructions shall be liable for any damage caused by the opening of such passages, or removal of such nets or obstructions, unless the same shall be unnecessarily, wantonly, or maliciously done.

Size of the meshes of the nets for taking salmon or trout in the sea, or any fish in inland and freshwater portions of rivers and lakes.

11. No net, (m) save as herein-after provided, for the taking of salmon or trout in the sea, estuaries, or tideways, or for the taking of any fish in the inland and freshwater portions of rivers and lakes, shall be used with a mesh of less size than one and three quarter inches from knot to knot, to be measured along the side of the square, or seven inches, to be measured all round each such mesh, such measurements being taken in the clear, when the net is wet; and if any person shall use any net contrary to this provision, such person shall be liable and subject to the penalties and forfeitures by said first-recited Act mentioned and prescribed in cases of any person using nets with meshes of less size than the size in the said Act prescribed and limited.

12. [Board may alter the size of meshes in certain localities.]

14. [Power to prohibit the use of engines for capture of fish which shall be deemed injurious to fisheries.]

15. [Board may permit the use of trammel or other nets during the daytime.]

Power to dredge for oysters from public beds to supply private beds during part of close time.

19. For the purpose of replenishing and supplying artificial oyster beds or layings, or other beds and layings the exclusive property of any person or persons, but for no other purpose whatsoever, it shall and may be lawful for any person to dredge for and take oysters from any natural public bed lying below the level of the lowest water of spring tides, during such part only of the close season, as now fixed or hereafter to be fixed under the provisions of said first-recited Act, as the [Board] shall upon inquiry think fit to appoint for such purpose, for or in any district or place: Provided always, that if any oysters dredged or taken during such part of the close season shall be brought to shore, or sold or offered for sale, or be found in the possession of any person on land, or be used for any other purpose than the replenishing or supplying any such artificial or other bed as aforesaid, every person so offending shall forfeit all such oysters, and be subject and liable to the same penalties and forfeitures as by said first-recited Act prescribed in cases of offences against the provisions of the said first-recited Act for the observance of the close season in respect to oysters.

By 11 & 12 Vict. c. 92 (The Fisheries (Ireland) Act, 1848)—

Persons killing salmon with rod not used for salmon.

21. . . . If any person using a rod shall under pretence or otherwise of fishing for trout perch pike or other fish take or kill salmon with such rod [penalty].

Persons using engines, nets, etc., without licence.

22. If any person shall use or erect any engine net instrument or device whatsoever subjected to licence duty as aforesaid [see s. 21] for the taking of salmon trout pollen or fish of the salmon or trout kind or cels (n) or by any means fish

(m) See 5 & 6 Vict. c. 106, ss. 20 and 66, *ante*.

(n) A licence must be issued to any one requiring the same on tender of the maxi-

mum amount mentioned in the schedule to the Act: *R. v. Coleraine*, 1906, 2 I. R. 219.

within any fixed salmon trout or eel fishery in any year without the same respectively being duly licensed for such year under the provisions of this Act every such engine net instrument and devices and such means of fishing shall be forfeited. . . . Sect. 22.

28. [Penalty for misusing or counterfeiting licence.]

29. Any person using any such engine net instrument or device as aforesaid or having the same erected or in fishing order or found with the same in his possession in or near any fishing place or going to or returning from fishing shall and is hereby required to produce to any of the [Board] or any officer of the [Board] or any conservator of the district or any inspector water bailiff or officers or men of the navy coastguard or constabulary when demanded the licence for the same [penalty]. Provided always that such parties as shall to the satisfaction of the justices be proved to have them in possession as manufacturers or sellers of the same and not for the purposes of using the same within the year in which such demand shall be made of them respectively shall be exempt from any such penalty. Persons using or having engines, nets, etc., to produce licence when required.

30. [Persons licensed for a rod in any district not liable to further duty for the same in any other district.]

34. [Powers of inspectors and water bailiffs to be the same as under previous Acts.]

41. [Penalty on unauthorized persons for entering into or killing or taking fish in or from several fisheries.]

By 13 & 14 Vict. c. 88 (The Fisheries (Ireland) Act, 1850)—

1. The several interpretation clauses in [the said recited Acts] contained shall be and are hereby repealed; and in the construction and for the purposes of [the said recited Acts] and of this Act, unless there be something in the subject or context repugnant to such construction, the words "person," "owner," and "proprietor," shall mean and include any body corporate, aggregate or sole, as well as an individual, and also any company or partnership; and any word importing the singular number only shall mean and include several persons or parties as well as one person or party, and several things as well as one thing, respectively, and the converse; and any word importing the masculine gender only shall mean and include a female as well as a male; and the word "lands" shall mean and include all messuages, lands, tenements, and hereditaments; and the word "waste" shall include and extend to any and to all uncultivated or unprofitable lands; and the word "county" shall include and extend to a county of any city or town; and the words "estuary" and "bay" shall include and extend to any harbour or roadstead; and the word "rivers" shall include and extend to tributaries of rivers, and to all other streams and watercourses; and the word "vessel" shall mean and include any ship, boat, cot, coble, or curragh; and the word "fish" shall extend to and include oysters and oyster brood; and the word "salmon" shall extend to and include grilse, pcall, sea trout, salmonets, par, and all other fish of the salmon kind, (o) and the spawn and fry thereof; and the word "trout" shall extend to and include pollen or fresh-water herring, and all fish of the trout kind, and the spawn and fry thereof; and the word "net" shall mean and include all descriptions of tackle, trawl, trammel, stake, bag, cog-hill, eel, haul, draft, and seine nets, and all other engines or devices, of whatsoever construction or materials, or howsoever known or styled, which shall be

Repeal of interpretation clauses in Acts relating to engines used in the fisheries of Ireland.

Interpretation of terms in such Acts and this Act.

(o) See 26 & 27 Vict. c. 114, s. 19, *post*. As to the meaning of "spring tides," see the same section.

Sect. 1. used for the like purposes as those in this Act or in the said recited Acts referred to; and the words "fixed net," (*p*) or "fixed engine," shall extend to and include weirs, stake, bag, stop, and still nets, and all other engines or devices used for the like purposes, of whatsoever construction or materials the same may be, or however known or styled, and whether fixed to the soil or held by hand, or made stationary in any other way; and the words "close time" or "close season" shall mean and include any time or season within which it is or shall be prohibited to fish for, take, or destroy any salmon, trout, oysters, or any fish of any of the kinds in this Act or in the said recited Acts referred to, or the brood, spawn, or fry thereof; and the word "fisheries" shall mean and include all fisheries, whether several or public; and the words "several fisheries" shall mean and include all fisheries lawfully possessed and enjoyed as such under any title whatsoever, being a good and valid title at law, exclusively of the public, by any person or persons, whether in navigable waters or in waters not navigable, and whether the soil covered by such waters be vested in such person or persons, or in any other person or persons; and the words "owner," or "proprietor," shall mean and include every person who shall be in the actual possession, or use and enjoyment, or receipt of the rents or profits, of any lands or fisheries (as the case may be), save that in every case in which any person shall be in possession or receipt of the rents or profits of any fisheries or lands under any sequestration, extent, elegit, or other writ of execution, or as a receiver under any order of a court of equity, the person against whom such writ shall have issued, or who but for such order would have been in possession, shall, jointly with the person in possession by virtue of such writ or order, be deemed for the purposes of this Act to be the owner of such fisheries or lands.

17. [Proceedings against and penalties on persons erecting or re-erecting or using weirs, etc., after order for removal or conviction for erection, etc., thereof or removal by warrant of Board or justices.]

18. [Order for removal of a weir, etc., by reason of its having been erected without permission of person claiming to be owner of soil shall not prevent the erection of weirs, etc., by such person in or adjoining to the place from which they have been abated and removed by order of court; but such person shall not acquire under this Act any better right to the soil, or to erect weirs, etc., but shall be subject to recited Acts and this Act.]

21. [Board may define the mouths of tributary rivers at their entrance into other rivers, etc., and regulations of recited Acts as to use of nets near mouths of rivers shall be observed as to such mouths when so defined.]

Removal of
nets used in
salmon fishing
from the banks
of rivers during
close seasons.

34. Every proprietor, lessee, or other person who shall be engaged in fishing for salmon by means of nets of any kind or description, shall remove and carry away, or cause to be removed or carried away, from any strand, or from the banks of any river, or from the vicinity thereof, during the yearly close season, all such nets; and in case any such person shall omit or neglect to remove or carry away, or cause to be removed or carried away, such nets as aforesaid, he shall forfeit all such nets [and penalty].

Penalty for
having in
possession or
exposing for
sale any part
of a salmon or
trout during
the close
season.

35. Any person in whose possession any part or portion of a salmon or trout shall be found or exposed for sale during the close season shall be in the like cases subject to the like penalties and forfeitures as are provided by the said recited Acts or any of them; and all persons empowered to enforce the provisions of the said recited Acts (*q*) and this Act shall be and are hereby empowered to seize all such salmon or trout, or any such portion thereof as aforesaid, when so

(*p*) See 26 & 27 Vict. c. 114, s. 44, *post*.

(*q*) 5 & 6 Vict. c. 106, s. 36.

found in the possession of any person or exposed for sale during the close season.

36. Any person found on the bank of or near any river with any deleterious matter in his possession, under such circumstances as shall satisfy the court before whom he may be tried that such person had employed or was about to employ such deleterious matter for the capture or destruction of fish [penalty]; and any person found taking fish from any river or lake, where it shall be proved to the satisfaction of any justice or justices that such fish have been wilfully poisoned [penalty].

37. It shall not be lawful to use any net, instrument, or device for taking fish (save and except rods and lines only) within two hundred yards of any such weir, (r) either above or below the same; and if any person shall offend against this provision [penalty], and shall also forfeit such net, instrument, or device: Provided always, that where such right has been exercised in any such place by any person or persons lawfully possessed of a several fishery therein for twenty years next before the passing of this Act, he shall not be subject to the penalty herein-before provided. (s)

38. (t) It shall not be lawful to take salmon or trout in any crib, box, cruive, eye, sluice, or gap, in any salmon, eel, or other weirs, whether the same be set in the tideway or in the fresh-water portion of any river, between the low water next in point of time before six o'clock on Saturday night and the low water next in point of time before six o'clock on Monday morning, if the weir be in the tideway, nor between six o'clock on Saturday evening and six o'clock on Monday morning, if the weir be in the fresh-water portion of any river; and in case any question or doubt should arise as to whether any such weir is in the tideway or in the fresh-water portion of the river, it shall be competent to the [Board], on application to them, to determine, by certificate under their hands and seals, whether such weirs should be subject to the aforesaid regulation relating to the tideway, or to the aforesaid regulations relating to the fresh-water, as to the said close time; . . . and any person offending against the said regulations respectively shall be subject to the forfeitures and penalties provided by the said recited Act or this Act for breaches of the law in respect to the weekly close time or close season.

39. The waste sluices, waste gates, or overfalls of the weirs of any mill or factory deriving their supply from rivers frequented by salmon shall, at all seasons of the year when and during the time such mills or factories shall not be used for milling purposes, be kept open, if no passage for fish be provided; and when such passage for fish shall be provided, then the sluices which admit the water to such mills or factories, and the waste sluices, waste gates, or overfalls, shall be kept down or shut, to force the water through such passage, for fish, as provided by the said Act of the sixth year of her present Majesty's reign, intitled "An Act to regulate the Irish fisheries"; and if the owners of any such mill or factory not used for milling purposes as aforesaid shall omit to keep any such sluice or sluices, waste gates, or overfalls, shut as aforesaid, or open as aforesaid, as required in the respective cases aforesaid [penalty]: Provided always, that the opening or shutting of such sluices, waste gates, or overfalls shall not in any way injuriously interfere with the machinery or water power of any mill or factory whatsoever.

provided, as provided by 5 & 6 Vict. c. 106. Penalty for neglect. Machinery or water interfered with.

Penalty for possessing deleterious matter with intent to poison rivers for the purpose of taking fish, or for taking fish proved to have been wilfully poisoned. Nets and other engines not to be used within certain distances of weirs for supplying water to mills or factories, or for navigation. Saving for prescriptive rights of owners of several fisheries. No salmon or trout to be taken in boxes, cribs, etc., either in the tideway or fresh-water portion of any river, during the weekly close time, as herein defined. Board, upon application, shall determine and certify whether weirs are in tideway or in fresh-water portion of river. Penalties on offenders. Sluices of weirs of mills and factories to be kept open, while mill, etc., is not in use, if no passage for fish is provided, and shut, if passage is provided.

(r) Used for supplying water to mills or factories or for navigation. post.

(s) See 26 & 27 Vict. c. 114, s. 16, post. (t) See 26 & 27 Vict. c. 114, s. 20, post.

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Otters, spears, gaffs, etc., prohibited.

Penalty.

Exception in case of eel spears.

Further regulations as to stake nets, etc., in the sea or tidal ways.

Nets for taking salmon not to be used, except by owners of several fisheries within the limits thereof, at the mouths of narrow rivers, or near the mouths of any rivers, or at the mouth or any other part of any river so as to be injurious to the passage of fish.

Penalty.

Close season for trout fishing.

Penalties for not opening or removing cribs, etc., or preventing the passage of fish through cribs, etc., in weekly close time.

Persons prevented by stress of weather exempted from penalties.

40. It shall not be lawful, in any fresh-water river or lake, at any season of the year, to use for the purpose of taking fish any otter, (u) lyster, spear, strock-haul, dree draw, or gaff (except when the latter implement may be used solely as auxiliary to angling with rod and line, or for the purpose of removing fish from any legal weir or box by the owner or occupier thereof); and if any person shall offend against this provision, he shall [penalty], and also forfeit such implement and the materials thereof: Provided always, that nothing herein contained shall be construed to extend to eel spears.

43. Stake weirs, stake nets, and other fixed nets, in the sea or tidalways, shall be so placed and erected, maintained and used, as that clear openings for the free passage of fish as in the said recited Acts provided can be made in the pouches and traps thereof [penalty].

44. It shall not be lawful for any person, save and except the owner of a several fishery within the limits thereof, at any time to shoot, draw, or use any net for taking salmon at the mouth of any river, where the breadth of such mouth between the banks thereof shall not exceed a quarter of a mile statute measure; and it shall not be lawful for any person, save such owner as aforesaid, (v) to shoot, draw, or use any net for taking salmon within half a mile seaward, or half a mile inwards, or along the coast, from the mouth of any river, such mouth to be defined, ascertained, and mapped, in case of dispute, by the [Board]; and it shall not be lawful for any person, save and except the owner of a several fishery in the whole of a river and its tributaries within the limits of such several fishery, to shoot, draw, stretch, or use nets at the mouth or any other part of any river in such wise as, in the judgment of the [Board], to be injurious or detrimental to the free passage of fish, and which they shall have prohibited by some bye law duly published as the law directs; and if any person shall offend by shooting, drawing, stretching, or using any net in any place or manner hereby prohibited [penalty]; and such net shall also be forfeited.

45. No person shall kill, take, or destroy, in any lakes or rivers, any trout between the twenty-ninth day of September in any year and the last day of February in the year following, nor shall any fixed crib, cruive, box, or other device, nor any haul, draw, or other net of any description, for the catching of such trout, be used in any lake or river frequented by salmon between the first and twenty-ninth day of September in any year, or at such periods as may be or may have been fixed for certain lakes and rivers by the [Board] in respect of salmon-fishing, under the powers in the said recited Acts contained.

46. (w) Any person occupying or using any crib, box, cruive, stake, flood, ebb, or head weir, stake, hag, or other fixed net, or basket, or other engines for catching fish, and failing to remove or open the same as required by the said Act of the sixth year of her Majesty, and any person using any means, device, or contrivance to prevent the free passage through such box, cruive, or engine, or in any way or by any means wilfully frightening or scaring, or attempting to frighten or scare, any salmon or other fish from passing through such box, crib, cruive, pouch, trap, eye, sluice, gap, or other engine, or taking therein any salmon, between six of the clock on Saturday evening and six of the clock on Monday morning, or between the low waters next in point of time to those periods respectively, as the case may be [penalty]: Provided always, that

(u) Otter in this section means a mechanical contrivance: *Alton v. Parker*, 30 L. R. Ir. 87.

(v) This applies to all rivers, and is not confined to rivers where the breadth of the

mouth does not exceed a quarter of a mile: *Parker v. Pim*, 1. R. 3 C. L. 572.

(w) See 26 & 27 Vict. c. 114, s. 20. *post*.

nothing herein contained shall be construed to render liable to any penalty any person who shall be able satisfactorily to prove that he was prevented by floods, storm, or stress of weather from removing such leaders (x) or making such openings as aforesaid, during the continuance of such prevention, but no longer. Sect. 46.

By 26 & 27 Vict. c. 114 (The Salmon Fishery (Ireland) Act, 1863)—

Regulations as to fixed Engines

3. After the passing of this Act no bag net shall be placed or allowed to continue in any river or the estuary of any river, as such river or estuary has been defined by the [Board], or within a distance of less than three statute miles (y) from the mouth of any river as defined as aforesaid. Prohibition of bag nets in certain places.

Any bag net placed or continued in contravention of this section shall be deemed to be a common nuisance, and may be taken possession of or destroyed; and any bag net so placed or continued, and any salmon taken by such bag net, shall be forfeited [penalty]: Provided always, that no bag net now legally existing shall be liable to be abated or removed, or be deemed illegal under this Act, by reason of its being within three miles of the mouth of a river in the whole of which, including all tributary rivers and lakes upon its course, the proprietor of such bag net has the exclusive right of catching salmon.

4. No fixed net that was not legally erected for catching salmon or trout during the open season of one thousand eight hundred and sixty-two shall be placed or used for catching salmon or trout in any inland or tidal waters. (z) Penalty on new fixed nets.

Any net placed or used in contravention of this section shall be deemed to be a common nuisance, and may be taken possession of or destroyed; and any net so placed or used, and any salmon taken by such net, shall be forfeited [penalty].

5. Subject to such appeal as is herein-after mentioned, (a) the [Board] shall abate and remove all fixed nets erected or used for catching salmon or trout in Ireland that are in their judgment injurious to navigation, and shall inquire into the legality of, and if satisfied of their illegality remove, all such other fixed nets erected or used as aforesaid as are in contravention of any Act of Parliament or law in force in Ireland. (b) Board to remove fixed nets, etc.

6. [Certificates as to certain fixed nets.]

7. Subject to such appeal as is herein-after mentioned, (a) the [Board] shall inquire into the legality of all fishing weirs throughout Ireland, and shall remove such as are in contravention of any Act of Parliament or law in force in Ireland; with this qualification, that where a fishing weir is illegal only by reason of its not having a free gap, as required by law, this section shall not empower the [Board] to remove such fishing weir, if an undertaking be entered into, to the Board to inquire as to fishing weirs, etc.

(x) *Sic.*

(y) Measured as the crow flies: *Cowper v. Burton*, 1 R. 2 C. L. 614.

(z) Fixed nets substituted for bag nets which were in use before such bag nets are legal: *Stewart v. Cubitt*, 1 R. 2 C. L. 349; *Williams v. Boyd*, 1 R. 3 C. L. 450. And so are stake nets in lieu of bag nets: *Reeves v. Robinson*, *ibid.* 472.

(a) Provided by s. 14.

(b) By 32 & 33 Vict. c. 92, s. 16, any person who shall fish with make use of

or erect any fixed engine for the capture of salmon without having obtained a certificate from [the Board] shall forfeit such fixed engine . . . and any person authorized to enforce the provisions of this Act or the Acts therewith incorporated may seize and take possession of any such fixed engine. The certificate is no defence unless the engine be in situation size and description in conformity therewith: *Hosford v. M^r Audiffe*, 1903, 2 I. R. 1.

Sect. 7. satisfaction of the [Board], by the owner or other person interested in such weir, to make a legal free gap therein within a time to be prescribed by the [Board], and a free gap is made accordingly.

8. [Persons unlawfully erecting or keeping up any fishing weir upon a river after notice to forfeit £50, with costs of suit.]

Regulations as to free gaps in weirs.

9. In every fishing weir there shall be a free gap or opening in accordance with the regulations following, under the powers of this Act; (that is to say,)

- (1.) The free gap shall be situate in the deepest part of the stream:
- (2.) The sides of the gap shall be in a line with and parallel to the direction of the stream at the weir:
- (3.) The bottom of the gap shall be level with the natural bed of the stream above and below the gap:
- (4.) The width of the gap in its narrowest part shall be not less than one tenth part of the width of the stream: Provided always, that such gap shall not be required to be wider than fifty feet, and shall not in any case be narrower than three feet; and provided also, that no existing gap in any weir shall be reduced in width, or a gap of less width substituted in lieu thereof, or any alteration made therein so as to reduce the flow of water through such gap:

Provided always, that no person shall be entitled to any compensation by reason of the enforcing of any free gap in any weir, anything to the contrary in any Act notwithstanding.

Rules as to construction of boxes and cribs in fishing weirs and fishing milldams.

10. The following rules shall be observed in relation to the construction of boxes and cribs in fishing weirs and fishing milldams; (that is to say,)

- (1.) The upper surface of the sill shall be level with the bed of the river:
- (2.) The bars or inscales of the heck or upstream side of the box or crib shall not be nearer each other than two inches, and shall be capable of being removed, and shall be placed perpendicularly: The boxes, cribs, or cruives shall not be built over, or in any other manner bidden from public inspection:

And the owner of any fishing weir or fishing milldam that has attached thereto any box or crib in contravention of this Act shall bring the same into conformity with this Act within six months after the commencement of this Act; [penalty].

Extension of weekly close time when inexpedient to make a free gap.

11. In any case where the breadth of the river where any chartered or patent fishing weir now exists shall not exceed forty feet, and it might be inexpedient to require a free gap to be made therein, the [Board] may, if they think fit, instead thereof, direct by their order the extension of the weekly close time for a period of twenty-four hours.

Rules for enforcing free gaps in fishing weirs.

12. The following rules shall be observed for the purpose of enforcing efficient free gaps in fishing weirs; (that is to say,)

- (1.) Where a weir is without a legal free gap at the time of the commencement of this Act, the owner of such weir shall within twelve months after the commencement of this Act make such a gap; (c) [penalty].
- (2.) Where a free gap has been made in a weir, but the same is not maintained in accordance with this Act, the owner of such weir [penalty].
- (3.) No alteration shall be made in the bed of any river in such manner as to reduce the flow of water through a free gap [penalty].
- (4.) No person shall place any obstruction, use any contrivance, or do any act, whereby fish may be scared, deterred, or in any way prevented from freely entering and passing up and down a free gap at all periods

(c) See *Devonshire v. Droghda*, 1900, 2 I. R. 161; *Devonshire v. Foot*, ib. 211.

of the year, or shall use any nets or other engines within fifty yards above or below any free gap [penalty]. **Sect. 12.**

13. Before removing any illegal fixed net or illegal fishing weir, the [Board] shall take the same proceedings as to summoning the parties interested in such net or weir, and as to hearing such parties, and any evidence they may produce, as they under the Salmon Fisheries Acts are required to take where any parties complain of the erecting, maintaining, or using any fixed engine; (d) Proceedings previous to abatement of illegal nets and weirs.

14. [Appeal from decision of Board to King's Bench.]

Miscellaneous

16. Notwithstanding anything contained in the said Salmon Fisheries Acts, it shall not be lawful for any person or persons, although lawfully possessed of a several fishery for twenty years next before the passing of the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter eighty-eight, to use any box, crih, cruive, net, instrument or device for taking fish (save and except rods and lines only) at or within fifty yards, either above or below a milldam, unless there is attached to such milldam a fish-pass of such form and dimensions as may be approved of by the [Board], nor unless such fish-pass has constantly running through it such a flow of water as will enable salmon to pass up and down it [penalty]. Restriction on fishing with nets, etc., near milldams.

17. [Power to define estuaries and mouths of rivers.]

18. If it be proved to the satisfaction of the justices that any boat, cot, or curragh found on or near waters frequented by salmon or trout has been used for the capture of salmon or trout during any part of the annual or weekly close time, the person or persons [penalty], and for the second or any subsequent offence, in addition to the foregoing penalty, the boat, cot, or curragh so used may be seized and forfeited; but this section, so far as relates to the forfeiture of the boat, cot, or curragh, shall not come into operation where a boat is used by some person other than the owner thereof, and the owner proves to the satisfaction of the justices that it was so used without his knowledge or consent. Penalties for use of boat in illegal fishing, etc.

19. It is hereby declared, that for the purposes of the said Salmon Fisheries Acts and of this Act "jenkin" and "gravelling" are deemed to be "salmon," and "spring tides" mean "ordinary spring tides." Declaration as to meaning of certain terms.

20. There shall be repealed so much of the said Salmon Fisheries Acts as provides that it shall not be lawful to take or kill any salmon or trout between six of the clock on Saturday evening and six of the clock on Monday morning, or between the low waters next in point of time to those periods respectively; and the said Acts shall be construed as if it had been enacted therein that no salmon or trout shall be fished for or taken in any way, except by single rod and line, between six of the clock on Saturday morning and six of the clock on the succeeding Monday morning; and all penalties imposed by the said Salmon Fisheries Acts, and the provisions made for enforcing the prohibition contained in the said Acts, and providing for the free passage of salmon and trout during the times therein in that behalf mentioned, shall apply accordingly; with this addition, that any net or other instrument, or the inscales or gates and rails of any crih, box, or cruive used between the times aforesaid shall be forfeited; and also that when any salmon or trout is taken at any fishing weir during the weekly close season in contravention of this Act and the said Salmon Fisheries Acts, or when any box, crih, or cruive is during the weekly close season left unopened or otherwise left not in conformity with Weekly close time.

(d) See 8 & 9 Vict. c. 108, ss. 2 and 3.

Sect. 20. the said Acts, the penalty in that behalf imposed by the said Acts shall be payable in respect of each box, crib, or cruive in the weir in which any fish is so illegally taken, or which is left as aforesaid unopened or not in conformity with the said Acts.

Alteration of annual close time.

21. There shall be repealed so much of the thirty-third section of the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter one hundred and six, as provides that the annual close season or period during which it shall not be lawful to take salmon shall not comprise fewer than one hundred and twenty-four days in each year; and in lieu thereof be it enacted, that such annual close season or period during which it shall not be lawful to take salmon shall not comprise fewer than one hundred and sixty-eight days in each year; and until an alteration is made by the [Board] in pursuance of the powers given to them by the Salmon Fisheries Acts and this Act, there shall be added at the end of the close time now established for each fishery such number of days, if any, as may be required to make the number of close days constituting the annual close time in that fishery amount to one hundred and sixty-eight days.

Exception of salmon or trout caught or kept for certain purposes.

22. Nothing in this Act contained shall apply to any person who shall catch or attempt to catch, or shall have in his possession, any salmon or trout for the purposes of artificial propagation or other scientific purposes; and nothing in this Act contained shall prejudice the legal right of any owner to take materials from any stream.

Season for angling with single rod and line.

23. Nothing in this Act shall be construed to affect angling with single rod and line, the close season for which shall be from the first day of November in each year to the first day of February in the year following.

Prohibition of use of salmon nets during certain hours in rivers.

24. From and after the passing of this Act, it shall not be lawful for any person to use any net, except a lauding net, for the capture of salmon or trout in the fresh-water portion of any river, as defined by the [Board] under this Act, between the hours of eight o'clock in the evening and six o'clock in the morning, except so far as the same may have heretofore been used within the limits of a several fishery next above the tidal flow, and held under grant or charter, or by immemorial usage; and every person offending . . . shall be subject to a penalty . . . and to the forfeiture of all boats, nets, and gear used in such illegal fishing.

Penalty for scaring or obstructing the free passage of salmon or trout during weekly close season.

25. No person shall in any manner whatever scare, impede, or obstruct the free passage of salmon or trout during the weekly close season; and any person acting in contravention of this section shall forfeit any fish taken by him, and any net or instrument used by him, and in addition thereto shall incur a penalty . . . but this section shall not apply to any person who takes fish legally by the single rod and line during the weekly close season.

As to use of hydraulic machines.

30. Where a turbine or similar hydraulic machine, which may be injurious to salmon or the young of salmon in their descent to the sea, is supplied from a river frequented by salmon, the person owning or using such machine shall, during the time in which such descent to the sea takes place, provide grating or other efficient means to prevent such salmon or young of salmon from passing into such machine [penalty].

Salmon passes and fish ladders to be open to inspection.

31. All salmon passes and fish ladders shall be at all times open to the inspection of the [Board] and the conservators of the district, and of any person duly authorized by them or any of them.

Construction of Act.

44. This Act, so far as is consistent with the tenor thereof, shall be construed with the Acts relating to salmon fisheries in Ireland, and herein referred to as "The Salmon Fisheries Acts"; and the definitions of words and expressions now in force in the said Salmon Fisheries Acts shall apply to the same

words and expressions when used in this Act, but so as to include "a bead weir" under the expression "fixed net," and that "fishing mill dam" shall mean a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes. Sect. 44.

46. Nothing in this Act contained shall render legal or be deemed to recognize as legal, or to confer, any title on any person in respect of any fixed net or fishing weir that is in contravention of any Act of Parliament or of the common law in force in Ireland. Saving clause.

By 54 & 55 Vict. c. 20 (The Pollen Fisheries (Ireland) Act, 1891)—

3. From on and after the passing of this Act it shall be illegal to take pollen of less size than eight inches in length, measured from the nose to the utmost extent of the tail, and any person wilfully taking, killing, destroying, buying, selling or exposing for sale, sending, or having in his custody or possession any pollen of less size than that herein-before mentioned shall forfeit [penalty], together with all such fish; and all persons empowered to enforce the provisions of the said Salmon Fishery Acts shall be and are hereby empowered to seize all such pollen. Pollen under certain size not to be taken.

4. Nothing in this Act contained shall apply to any person who shall catch or attempt to catch or shall have in his possession such pollen for scientific purposes, with the written permission of the inspectors of Irish fisheries. Exception of pollen caught or kept for certain purposes.

5. It shall be lawful for all officers and men of the constabulary and for all persons empowered to enforce the provisions of the Salmon Fishery Acts, to open and examine all baskets and boxes and other packages containing fish, whether at railway stations, docks or quays, markets, stores, fishing places, or any other places whatsoever, for the purpose of enforcing the provisions of this Act and of the said Acts: Provided that none of the parties hereby authorized to open and examine such baskets, boxes, and other packages shall be liable for any damage caused by such opening and examining, unless the same shall be done wantonly and maliciously. Constabulary, water bailiffs, and others empowered to open and examine baskets and boxes.

6. All officers and men of the constabulary, and any inspectors, water bailiffs, or other officers appointed under the said Acts, acting within the limits of his district, may do all or any of the following things in addition to all other powers or duties conferred on him by the said Acts or this Act (that is to say):— Constabulary, water bailiffs, and others empowered to stop and search boats on salmon rivers.

(1.) Stop and search on any river, lake, or estuary or part of the sea coast, any boat, barge, corack, or other vessel used in fishing, or which there is reasonable cause to suspect contains any pollen, and seize any fish, instrument of fishing or other articles forfeited in pursuance of the said Acts or this Act; and any person refusing to allow, etc. [penalty].

(2.) Search and examine all nets, baskets, hags, hampers, boxes, or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught; seize all fish and other articles forfeited in pursuance of the said Acts or this Act. Any person refusing to allow, etc. [penalty].

7. The production by the water bailiff or other officer of the instrument of his appointment, executed in the manner prescribed by this Act, shall be a sufficient warrant for any water bailiff or other officer exercising the authority Water bailiff's warrant sufficient authority.

Sect. 7. given to him under the said Acts or this Act: Provided always, that the production of such instrument by any officer shall not be necessary unless he has first been required to produce it.

8. [Validity of warrant.]

9. [Officers acting under Fishery Acts to carry out this Act.]

IV. WALES

These laws are as in England. (e)

(e) As to Sunday closing of licensed premises, see 44 & 45 Vict. c. 61. Sunday in this Act does not include Good Friday

and Christmas Day: *Forsdike v. Colquhoun*, 11 Q. B. D. 71

PART III

LIABILITIES

UNDER WARRANTS AND ORDERS OF SUPERIOR COURTS AT COMMON LAW

Liabilities.

*Underwarrants
and orders of
superior courts
at common law.*

THE first point to consider in reference to the liability of officers when acting under warrants and orders of any kind which issue in a due and regular manner is this, that obviously the exercise of the power conferred may be either (1) accurate, or (2) inaccurate. Inaccuracy of performance again divides itself into two kinds, namely, that which occurs where the power has been exceeded, and that where the duty to be performed has to some extent at least been neglected. It is only in the case of accurate performance that protection is afforded to the officer by virtue of the warrant. (a) As regards inaccuracy, where the power has been exceeded, it would expose the officer to proceedings either civil or criminal on account of the excess, and where there has been neglect of duty to the detriment of the public, an attachment, information, or action would be held to lie. But where there has been mere excess of authority by officers acting under warrant, the doctrine of trespass *ab initio* does not apply as in the case of an overcharge in the nature of extortion, (b) nor does it in any event in the case of nonfeasance. (c) On the other hand, where there is any grossness of culpability in the excess such doctrine is applicable. Where for instance a sheriff merely continued in possession longer than the time allowed by law, he was held a simple trespasser. (d) But where he so continued after the return day of the writ, such excess was held to constitute him a trespasser *ab initio*. (e) And the same was decided where under a writ of *ca. sa.* he had broken an outer door. (f)

Performance may be (1) accurate or (2) inaccurate, which latter consists of (a.) excess or (b.) neglect.

Trespass *ab initio* not applicable in cases of (1) mere excess or (2) nonfeasance but where excess grave.

(a) *Leach v. Money*, 19 St. Tr. 1001; and *cf. Crozier v. Cundy*, 6 B. & C. 232; and *Bell v. Ashley*, 2 M. & S. 259; *Rae*, 2 R. 669.

(b) *West v. Nibbs*, 4 C. B. 172. See this doctrine stated, *post*, p. 364.

(c) *Six Carpenters' Case*, 8 Coke, 146 a.

(d) *Ash v. Dawnay*, 8 Ex. 237.

(e) *Aitkenhead v. Blades*, 5 Taunt. 198.

(f) *Kerbey v. Denby*, 1 M. & W. 336.

No justification.

And in this last-mentioned case Lord Abinger said: "Where a party by reason of any irregularity becomes a trespasser *ab initio*, he cannot justify at all."

Warrant must issue (1) within jurisdiction, (2) apparently so, or (3) without.

It has been already stated that the officer can claim the protection of the warrant only in those cases where there has been accurate performance. This proposition needs a further limitation. The execution of a warrant or order of a superior Court at common law must take place under one of three conditions. Either the warrant or order must be (1) within the jurisdiction of the Court which issues it, or (2) apparently so, or (3) clearly outside such jurisdiction. The rule of law is that where an officer is acting under a warrant issued subject to either the first or second conditions, he is under no liability whatever on account of the execution, provided with no unnecessary force or violence he does simply what he was directed to do. (g)

Protection in first two cases.

Except as to House of Commons.

But in the case of warrants and orders of the House of Commons the protection is confined to the first case only, namely, where such House had jurisdiction to issue the warrant or order. In *Stockdale v. Hansard* (h) it was held no defence to an action for publishing a libel that the defamatory matter was part of a document which was by order of the House of Commons laid before the House, and thereupon became part of the proceedings of the House, and which was afterwards by order of the House printed and published by the defendants, on the ground that the existence of such privilege as would support the plea was negatived. On the other hand, in *Bradlaugh v. Erskine*, (i) to a claim for damages for an assault committed on the plaintiff, a member of Parliament, while attempting to enter the House for the purpose of taking his seat, defendant pleaded in justification thereof that the House had previously resolved and ordered that the defendant should "remove plaintiff from the House until he should engage no further to disturb the proceedings of the House," and that acting in pursuance of such order, defendant resisted and removed plaintiff. It was held on demurrer that the plea was good on the ground that the right of the Houses to impose discipline within their walls was absolute and exclusive. (k)

Rule in *Turner v. Felgate*.

"Writs issued by a superior Court not appearing to be out of the scope of their jurisdiction are valid and of themselves

(g) *Howard v. Gossett*, 10 Q. B. 359; cf. *Andrews v. Marris*, 1 ib. 17; and see *Brown v. Watson*, 23 L. T. 745; *Tarlton v. Fisher*, Doug. 671. Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse quia parere necesse est.

(h) 9 Ad. & E. 1.

(i) 47 L. T. 618.

(k) See *Bradlaugh v. Gossett*, 12 Q. B. D. 271, and the remarks of Alderson, B., and Tindal, C.J., in *Gossett v. Howard*, 10 Q. B. 412, n.

without any further allegation, a protection to all officers and others in their aid acting under them; and that although they be on the face of them irregular as a *capias* against a peeress (*l*) or void in form as a *capias ad respondendum* not returnable the next term (*m*) for the officers ought not to examine the judicial act of the Court whose servants they are, nor exercise their judgment touching the validity of the process in point of law, but are bound to execute it, and are therefore protected by it." (*n*)

If the process issue from a Court or person having competent jurisdiction, it will confer an authority even though there be error or irregularity in the previous proceedings (*o*) or the charge contained in it be utterly unfounded. (*p*) But if it be defective on the face of it, as if there be a mistake in the name of the party to be arrested, or if the name of the officer or party to be arrested be inserted without authority and after the issue of the process, the apprehension may be resisted and the killing of the officer will be manslaughter only. (*q*)

The phrase above quoted, "for the officers ought not to examine the judicial act of the Court whose servants they are, nor exercise their judgment touching the validity of the process in point of law," is one which requires interpretation. It may be thus stated. Being satisfied that the act of which the process issuing in a due and regular manner is the consequence, is the judicial act of the Court whose servants they are, they are not to inquire further, but are bound to execute it. But it is quite clear that they are bound to inquire so far as to satisfy themselves that it is the judicial act of such Court. And it is obvious that it may prove *not* to be so in two modes—first, that the process is feigned, forged or simulated, and is not the process or order of the Court, (*r*) or second (which is the third condition under which such warrants and orders may issue) that the Court has in the specific instance manifestly exceeded its jurisdiction, (*s*) inasmuch as it was unable to take cognisance of the cause or matter in which the process issued. (*t*) Here it is no defence

(*l*) *Countess of Rutland*, 6 Rep. 54 a.

(*m*) *Parsons v. Lloyd*, 3 Wils. 341.

(*n*) *Turner v. Felgate*, 1 Lev. 95: *Cotes v. Michill*, 3 ib. 20. See the judgment of Parke, B., in *Gossett v. Howard*, 10 Q. B. 453.

(*o*) 1 Hale P. C. 457: *Aithen v. Finlay*, 15 S. 683.

(*p*) 1 Hale P. C. 310; *Green v. Elgie*, 5

Q. B. 99; *Ex parte Fernandez*, 10 C. B. N. S. 3.

(*q*) *Ibid*.

(*r*) *Hooper v. Lane*, 6 H. L. C. 443.

(*s*) *Stockdale v. Hansard*, 9 Ad. & E. 1.

(*t*) *Rutland*, *ibi supra*; *Parsons v. Lloyd*, *ibi supra*; *Smith v. Bouchier*, 2 Stra. 994; *Perkins v. Proctor*, 2 Wils. 385; and see *R. v. Danser*, 6 T. R. 245.

to the officer if he execute it, and he can derive no protection from it. (*u*)

[The law of Scotland appears to be practically the same.] (*x*)

Justification.

With regard to justification, it has been held that a man acting under legal authority is not confined to the authority under which he has professed to act at the time when he acted, but he may resort to any other authority which justified his proceeding. (*y*) Again, where the judgment is subsequently reversed as being wrong in point of law, all irregular process under it before the appeal is heard is good, and affords a justification to all parties acting under it. (*z*) But to pretend to use a legal privilege as a mere cloak for doing a wrongful act affords the wrongdoer no more protection and gives him no greater right than if the privilege had no existence. (*a*)

Pleading.

In pleading, the defendant is bound to set forth the warrant, and rest his justification upon it, (*b*) but he need state nothing in the defence but the issue thereof. (*c*)

The greater part of the cases which occur in which officers of the superior Courts are concerned are those in which the defendant is—

Sheriff.

THE SHERIFF

whose position in point of law is peculiar. Although he is the officer entrusted with the execution of the King's writs, (*d*) practically he never executes in person, but employs under-sheriffs, bound bailiffs and others, for that purpose. The writ which goes to the sheriff has upon its face an injunction to make out his warrant to his bailiff to levy the execution in question. The justification of the sheriff is the writ, of the bailiff the warrant. (*e*) From this principle it follows that so far as the liability of the sheriff is concerned, it matters not what is the form of the warrant which he issues to the bailiff. He is not only liable for the acts of the bailiff done under the warrant, (*f*) but also for any mistake or misconduct committed

Warrant to bailiff.

Liability of sheriff not limited by form thereof.

(*u*) *Judicium a non suo judice datum nullius est momenti.*

(*x*) See Smith on Reparation: *M'Lean*, 2 Swin. 185.

(*y*) Per Williams, J., *Hooper v. Lane*, *ubi supra*, p. 499. If this principle be extended to cases other than warrants such justification would require careful scrutiny.

(*z*) *Williams v. Smith*, 14 C. B. N. S. 596; *Smith v. Sydney*, L. R. 5 Q. B. 203.

(*a*) *Lucas v. Nockells*, 10 Bing. 157.

(*b*) *Greene v. Jones*, 1 Wms. Sauud. 488.

(*c*) *Cotes v. Michill*, *ubi supra*; *Britton v. Cole*, 1 Salk. 408. If the officer joins in pleading with a party for whom the writ or warrant would be no defence he loses the benefit of it: *Smith v. Bouchier*, 2 Str. 993; *Morse v. James*, Willes, 122.

(*d*) 50 & 51 Vict. c. 55, s. 8.

(*e*) *Hooper v. Lane*, *ubi supra*.

(*f*) *Crowder v. Long*, 8 B. & C. 605.

in the course of the execution. (g) It is no defence for the sheriff to say that his orders were not attended to. He still remains liable, provided the act complained of be one which the officer was bound to do while acting in execution of the sheriff's orders, (h) and an actual recognition by the sheriff of such acts is not necessary. (i)

"There is no doubt that the sheriff is liable for all acts done and neglects of duty by the bailiff in the execution of a writ, on the ground that if the sheriff thinks fit to commit the execution of a writ, which he is bound to execute, to another, he is responsible if that person does not execute it properly, and is in the same condition as if he had executed it himself, (k) the case of a sheriff differing in this respect from the liability of an ordinary principal, for the acts of an agent who does not pursue the authority committed to him." (l) And this is so "for the sake of securing a responsible recourse for indemnity in case of any wrong done in the execution of process." (m)

[In Scotland the messenger-at-arms is liable in practically the same way. But he executes in person, and his cautioners, i.e. sureties, are generally sued with him.]

In order to render the sheriff liable for the act of his officer, it is sufficient to produce the warrant, without the writ, and it lies upon the sheriff to prove that no such writ issued, (n) but the mere proof that the officer is the bailiff of the sheriff, without producing the warrant is not sufficient (o) unless there be recognition by the sheriff that the officer acted under his authority, which will dispense with the necessity of producing the warrant. (p) If the officer swear that the warrant existed, though it be lost, it is sufficient, (q) and in such cases secondary evidence is admissible. (r)

Where the warrant recites the writ, evidence of the judgment is still necessary. (s) And it has been held that the sheriff need not prove the writ where the plaintiff claims by virtue of an assignment which is void as against creditors. (t)

(g) *Smart v. Hutton*, 8 A. & E. 568.

(h) *Smith v. Pritchard*, 8 C. B. 588.

(i) *Sanderson v. Baker*, 3 Wils. 309.

(k) *Parrott v. Mumford*, 2 Esp. 585.

(l) *Per Parke, B., Woods v. Finnis*, 7 Ex. 371.

(m) *Per Erle, J., Hooper v. Lane*, ubi supra. As to a writ directed to the coroner, see *Surgeon v. Cowan*, 1 Cr. & M. 491.

(n) *Gibbins v. Phillips*, 7 B. & C. 535; *Grey v. Smith*, 1 Camp. 387. See *George*

v. Perring, 4 Esp. 63.

(o) *Drake v. Sikes*, 7 T. R. 113.

(p) *Jones v. Wood*, 3 Camp. 228;

Shepherd v. Wheble, 8 C. & P. 534;

Martin v. Bell, 1 Stark. 413.

(q) *Moon v. Raphael*, 2 Scott. 489.

(r) *Minshall v. Lloyd*, 2 M. & W. 450;

Taplin v. Atty, 3 Bing. 164.

(s) *White v. Morris*, 11 C. B. 1015;

Bessey v. Windham, 6 Q. B. 166.

(t) *Ogden v. Hesheth*, 2 C. & K. 772; and see *Reid v. Poyntz*, 6 M. & W. 412.

Indorsement. Proof of the indorsement of the officer's name on the writ by a clerk in the under-sheriff's office is *prima facie* evidence to connect the sheriff. (u)

Expiration of office. Where the execution took place at the time of year when the sheriff's were changed, and a witness after the case was set down for trial saw a form of return signed by the defendant, as sheriff, indorsed on the writ, which had never been returned, it was held sufficient to shew that he was the sheriff who executed the writ. Tho writ, when produced, having the name of the sheriff erased, it was held for the jury to say whether the erasure was made to correct a mistake, or to defeat the plaintiff. (x)

Survivor. In an action against a surviving sheriff of London, a return to a writ directed to both sheriffs, purporting to be that of both, is conclusive to shew that the return was authorized by the survivor. (y)

Admissions. Admissions made by an officer while in possession under a writ are evidence against the sheriff, (z) and if the officer be guilty of excess, even though it be contrary to the orders of the under-sheriff, the sheriff will not be allowed to bring evidence which would tend to disclaim his responsibility. (a)

A sheriff's-officer who is subpœnaed to produce his warrant, need not be sworn. (b)

Under-Sheriff. *The Under-Sheriff.*—With regard to the under-sheriff, it appears that he is, while acting in that capacity, not liable for any neglect of duty, nor will an action lie against him for any default in him. For all such neglect or default, the sheriff is alone responsible. (c) But this rule does not extend to cases of extortion on the part of this officer when proceeded against criminally, nor to any other liability criminally for unauthorized acts. (d)

Or where sheriff dies. Where the sheriff dies, the under-sheriff must, until a successor be appointed, execute the office of sheriff, and while so doing he is liable in all respects as the sheriff, and may appoint a deputy. (e)

(u) *Scott v. Marshall*, 2 C. & J. 238; *Fernor v. Phillips*, 5 Moo. 184.

(x) *Whitehouse v. Atkinson*, 3 C. & P. 344.

(y) *Carlile v. Perkins*, 3 Stark. 163.

(z) *Jacobs v. Humphrey*, 2 Cr. & M. 413.

(a) *Searle v. Halifax*, 7 M. & W. 288.

(b) *R. v. Murlis*, M. & M. 515; *Summers v. Moseley*, 4 Tyr. 158.

(c) *Cameron v. Reynolds*, Cowp. 406. In Ireland actions for neglect or misconduct lie also against this officer: 57 Geo. III. c. 68, s. 3.

(d) *Hescott*, 1 Salk. 330; *Laicock*, Latch 187; *Rankin v. Kennedy*, 1 T. R. 244.

(e) 50 & 51 Vict. c. 55, c. 25. I., 45 & 46 Vict. c. 49, s. 40.

Where an assignment of a lease by deed taken in execution was made in the name and under the seal of office of the sheriff, by A. B., acting as under-sheriff, it was held that such assignment was sufficiently proved without further proving the appointment of A. B., as under-sheriff. (*f*)

The Bailiff.—Bailiffs are of three kinds, namely, special bailiffs, bound bailiffs and bailiffs of liberties.

A special bailiff is one appointed by the sheriff for the execution of a particular writ at the instance of the execution-creditor, or some other person similarly interested or his agent. The effect of the selection of such a bailiff or giving special directions to a particular bailiff is to relieve the sheriff from responsibility to the party at whose instance he was appointed, (*g*) but to all other persons he is liable in the usual manner. (*h*) What constitutes a special bailiff is matter of evidence in each case. (*i*) A mere request that a particular officer may be employed is not sufficient, (*k*) nor is mere interference with the officer on the part of the debtor. (*l*)

A bound bailiff is the one usually employed by the sheriff.

It is no part of the duty of this officer to receive writs of execution from the parties. (*m*)

If the warrant be addressed to him alone, and not to him and his assistants, he must himself execute it, (*n*) or, at any rate, be near at the time of execution. (*o*) The receipt of money by the bailiff in satisfaction of a judgment-debt is receipt by the sheriff, and the sheriff is liable therefor, although there is no evidence of the money coming to his hands. (*p*) The bailiff would appear to be personally liable for a false return. (*q*) There is no liability criminally on the part of the sheriff for the acts of the bailiff, (*r*) and this includes proceedings for penalties for extortion against the officer. (*s*) In such case the sheriff is irresponsible. (*t*)

A liberty is a district in regard to which grants have been anciently made by the Crown to individuals conferring on them

(*f*) *James v. Brown*, 5 B. & Ald. 243.
(*g*) *Porter v. Vine: Pullister v. Pullister*, 1 Chit. 613.

(*h*) Wat., 2nd ed., p. 41.

(*i*) *Ford v. Leche*, 8 A. & E. 699.

(*k*) *Bulson v. Meggatt*, 4 D. P. C. 557; *Corbet v. Brown*, 6 ib. 794. In 1. such bailiffs may be appointed for civil bill decrees: 34 & 35 Vict. c. 99, s. 5.

(*l*) *Wright v. Child*, L. R. 1 Ex. 358.

(*m*) *Triminger v. Keene*, W. N. (1882), 106.

(*n*) *R. v. Noonan*, 1 R. 10 C. L. 505.

(*o*) Wat., p. 70.

(*p*) *Woodman v. Gist*, 8 C. & P. 213; *Jons v. Perchard*, 2 Esp. 507; *Gregory v. Cotterell*, 5 El. & Bl. 571.

(*q*) *Jackson v. Hill*, 10 Ad. & E. 477.

(*r*) *Sanderson v. Baker*, 3 Wils. 309; 2 W. Bl. 832; *Woodgate v. Knatchbull*, 2 T. R. 154.

(*s*) 50 & 51 Vict. c. 55, s. 29. I., see 57 Geo. III. c. 68, s. 3.

(*t*) *Woodgate v. Knatchbull*, *ubi supra*.

Sheriff to enter when. or their bailiffs the exclusive privilege of executing legal process therein. (u) Westminster and Pontefract are instances of such liberties. The powers, duties and liabilities of a bailiff of a liberty are similar to those of a bound bailiff. (x) When the king is a party, or the writ contains a *non omittas* clause, the sheriff or his officer must enter the franchise and execute the writ. And in any other case he may enter, and the execution is not on that account irregular; but the lord may recover compensation from the sheriff, for an infringement of his right; though the party against whom the writ was issued has no remedy. (y) When the sheriff has made out his mandate to the bailiff of a liberty, the bailiff and not the sheriff is responsible. (z) Process directed in the first instance to the bailiff of a franchise is void, (a) and the bailiff executing it is guilty of a trespass against the party whose goods are taken in execution, for he is not the recognised officer of the Court, but the sheriff. (b) The sheriff's mandate requires the bailiffs of the liberty to make their return to the sheriff; but, in practice, such return is made direct to the Court. (c)

Liability of bailiff.

Return.

Under warrants and orders other than those of superior courts at common law.

A. After adjudication. Liability.

UNDER WARRANTS AND ORDERS OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW

A. AFTER ADJUDICATION

The liability of an officer when acting under a warrant or order of this class where there has been an adjudication is practically identical with that of an officer acting under warrant or order of a superior Court at common law, the main distinction being that which was pointed out at the commencement of the work, namely, that whereas the presumption in favour of jurisdiction is general in the case of warrants and orders of the kind last mentioned, it extends only to what appears on the face of the particular instrument in the case of these warrants and orders.

Putting aside this distinction, the rule as to liability is the same, namely, that where an officer acts under a warrant or order of the class we are now considering, which shows on its face to have been made (1) within the jurisdiction of the Court or person issuing it, or (2) apparently so, it is a complete justification to the officer. (d) On the other hand, where it clearly appears to

(u) Steph. Comm. 11th ed., p. 640.

(x) 50 & 51 Vict. c. 55, s. 34.

(y) *Carrett v. Smallpage*, 9 East, 330.

(z) *Boothman v. Earl Surrey*, 2 T. R. 5.

(a) Except in Westminster.

(b) *Grant v. Bugge*, 3 East, 128.

(c) Wat., p. 61.

(d) *Andrews v. Marris*, 1 Q. B. 17;

Patchett v. Bancroft, 7 T. R. 367; *Olliet v. Bessey*, T. Jon. 214

have been made without such jurisdiction, being beyond the scope of the powers delegated to the Court or officer issuing it, it is no protection to the officer, and he can derive no shelter from what is practically a piece of waste paper. (e) When made without jurisdiction.

It is necessary for a party who relies upon the decision of an inferior tribunal to show that the proceedings were within the jurisdiction of the Court. (f) An officer of an inferior Court may justify acting under process which is only voidable, but not under void process. (g) But in an action by A. against B. for false imprisonment, B. cannot defend himself under a justice's warrant against C., although A. was charged for felony before the magistrate, and was the person against whom the warrant was intended to issue. (h) "It would be dangerous if a person, whose office is purely ministerial, were allowed to sit in judgment and say who is the unnamed person intended by the warrant which he is required to execute." (i) Onus on defendant.

Trespass is only maintainable where the process is an absolute nullity, not where it is merely erroneous in form. (k) Where there is no jurisdiction as above stated, the whole proceeding being *coram non iudice*, process is no protection against such an action. (l) No trespass for error in form.

The doctrine of trespass *ab initio* is as applicable to cases arising under these warrants and orders as to those of superior Courts at common law; (m) but since the greater part of these warrants are issued either by County Courts or by justices to both classes of which a special form of protection is afforded, the point becomes of little practical value. Moreover, under certain statutes, it is expressly laid down that officers acting under warrants issued thereunder shall not be liable as such trespassers. (n) Trespass *ab initio*.

As to warrants of the County Court it is laid down that the high bailiff is by himself or by the bailiffs appointed to assist High bailiff.

(e) *Curratt v. Morley*, 1 Q. B. 28; and see *E. v. Danser*, 6 T. R. 245. As to a tort committed in pursuance of a proclamation of a foreign sovereign, see *Curr v. Fracia*, 1902, A. C. 176.

(f) *Per Alderson, B., Stanton v. Styles*, 5 Ex. 583; *Moravia v. Sloper*, Will. 30. See *McCreadie*, 1907, S. C. 1176.

(g) *Morse v. James*, Will. 122; see *Ex parte Besset*, 6 Q. B. 481.

(h) *Hoye v. Bush*, 1 M. & G. 775.

(i) *Per Tindal, C. J.*, S. C.

(k) *Riddell v. Pakeman*, 2 Cro. M. & R. 30; and see *R. v. Binney*, 1 El. & B. 810; *R. v. Ely*, 5 E. & B. 489; *Keane v. Reynolds*, 2 El. & B. 748.

(l) *Marshalsea*, 10 Rep. 68 b, 76 a; *Perkin v. Proctor*, 2 Wils. 382; *Nichols v. Walker*, Cro. Car. 394; *Martin v. Marshal*, Hob. 63; *Smith v. Bouchier*, 2 Str. 993; *Higginson v. Martin*, 2 Mod. 195; and see *Doswell v. Impey*, 1 B. & C. 163; *Bullentine v. Ross*, 2 Mur. 529; *Quinn v. Pratt*, 1908, 2 I. R. 69.

(m) See the cases cited, *ante*, p. 617.

(n) See *e.g.* 2 & 3 Vict. c. 71, s. 51; 8 & 9 Vict. c. 109, s. 21; 17 Geo. II. c. 38, s. 8; and see also *Olliet v. Bessey*, T. Jon. 214. As to I., 48 Geo. III. c. 140; 23 & 24 Vict. c. 154, s. 89; 27 & 28 Vict. c. 99, s. 25.

Liability.

him to execute them, and he is to be responsible for the acts and defaults of himself and such bailiffs as the sheriff is for himself and his officers. (o) The high bailiff, however, of the Court out of which a warrant originally issues is not responsible for any irregularities in its execution by the bailiff of another Court, even though his own bailiff assisted therein. (p)

Protection.

And for the protection of this officer it is provided that no action shall be commenced against any bailiff or against any person acting by the order or in aid of any bailiff for anything done in obedience to any warrant under the hand of the registrar and the seal of the Court until demand has been made or left at the office of such bailiff by the party intending to bring such action or by his solicitor or agent in writing, signed by the party demanding the same, of the perusal and copy of such warrant and the same has been refused or neglected for the space of six days after such demand, and in case after such demand and compliance therewith by shewing the said warrant to and permitting a copy to be taken thereof by the party demanding the same any action shall be brought against such bailiff or other person acting in his aid for any such cause as aforesaid without making the registrar who signed or sealed the said warrant, defendant on producing or proving such warrant at the trial of such action, a verdict shall be given for the defendant notwithstanding any defect of jurisdiction or other irregularity in the said warrant, and if such action be brought jointly against such registrar and also against such bailiff or person acting in his aid as aforesaid, then on proof of such warrant the finding shall be for such bailiff and for such person so acting as aforesaid notwithstanding such defect or irregularity as aforesaid. (q) This section and 56 & 57 V. c. 61 (r) cover cases where the warrant has been made without jurisdiction. (s)

Constables, etc.

A similar enactment, substituting the words "constable or other officer" for "bailiff" and "justice" for "registrar" is in force for the protection of officers acting under warrants of justices. (t)

(o) 51 & 52 Vict. c. 43, s. 35; and see *ante*, p. 620; and *Burton v. Le Gros*, 34 L. J. Q. B. 91. In S. the sheriff's officer appears to be under the same liability as the messenger-at-arms. As to I., 27 & 28 Vict. c. 99, s. 4; *O'Dea v. Hickman*, 20 L. R. Ir. 435, but no action can be brought more than six months after the sheriff goes out of office. See s. 5, and *Riordan v. Irvine*, 1908, 2 I. R. 138.

(p) *Smith v. Pritchard*, 8 C. B. 565. A registrar who performs the duties of

high bailiff is under the same liability.

(q) 51 & 52 Vict. c. 43, s. 54. No similar enactment seems in S. or I.

(r) *Post*, p. 637.

(s) *Aspey v. Jones*, 54 L. J. Q. B. 98.

(t) 24 Geo. II. c. 44, s. 6. This Act does not apply to S. but constables there have the same privilege as justices: *Douglas v. Lockhart*, M. 7640; *Boyd's Justice*, 791. 1. 43 Geo. III. c. 143, s. 6: *Barton v. Crawford*, Batty, 221.

With reference to this latter enactment, it has been held that it does not apply to warrants of the Queen's Bench (*u*) nor of the Secretary of State, (*x*) nor of commissioners of taxes, (*y*) and that it extends only to actions of tort. (*z*) It seems, however, to refer to all officers generally, (*a*) although not in an action of *replevin*. (*b*) In order to obtain the benefit of the statute the officer must shew that he acted in obedience to the warrant, and did not exceed his authority, (*c*) and that he has complied with the terms of the section; (*d*) but if he has exceeded his duty, but such excess was committed in the *bona fide* belief that he was acting in execution thereof, he is equally entitled to the protection. (*e*) And it applies though the warrant be granted without jurisdiction, (*f*) or the magistrates without authority order the suspension of the execution. (*g*) If, however, the officer loses the protection of the statute, he must justify under the warrant. (*h*)

Where statute applies.

Does not apply.

The statute does not apply unless there be a remedy over (supposing the warrant illegal) against the magistrate who issues it. (*i*) Nor does it where a wrong person is arrested or a person under a wrong name, (*k*) or a door be broken in execution of civil process, (*l*) or where goods are seized not mentioned in the warrant, and not likely to be of use as evidence, (*m*) or where the officer has executed it outside his jurisdiction. (*n*)

The demand is good if signed by the plaintiff, his attorney or agent, and served or left by any other person, (*o*) and though it require the perusal and copy to be given within three days. (*p*)

Demand.

As regards the County Court it is enacted that no officer shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it. (*q*) And the same rule applies to officers acting

Irregularity.

(*u*) *Gladwell v. Blake*, 1 C. M. & L. 636.

(*x*) *Entick v. Carrington*, 19 St. Tr. 1030.

(*y*) *Charleton v. Alway*, 11 A. & E. 993.

(*z*) *Green v. Rowan*, 7 C. & P. 48.

(*a*) *Per Kenyon, C.J., Harper v. Carr*, 7 T. R. 274; *Butt v. Newman*, Gow. 97.

(*b*) *Milward v. Coffin*, 2 W. Bl. 1331.

(*c*) *Bell v. Oakley*, 2 M. & S. 259.

(*d*) *Clark v. Woods*, 17 L. J. M. C. 189. See *Jones v. Vaughan*, 5 East, 445.

(*e*) *Parton v. Williams*, 3 B. & A. 330; *Gosden v. Elphick*, 4 Ex. 445.

(*f*) *Atkins v. Kilby*, 11 Ad. & E. 784; *Price v. Messenger*, 2 B. & P. 158. See *Cameron v. Deans*, 4 F. 11.

(*g*) *Barrons v. Luscombe*, 3 A. & E. 589.

(*h*) *Parton v. Williams*, *u.s.*

(*i*) *Sly v. Stevenson*, 2 C. & P. 464; *Cotton v. Kadwell*, 2 N. & M. 399.

(*k*) *Hoye v. Bush*, 1 M. & G. 775.

(*l*) *Bell v. Oakley*, 2 M. & S. 259.

(*m*) *Crozier v. Cundy*, 6 B. & C. 232; *Kay v. Grace*, 5 M. & P. 147.

(*n*) *Milton v. Green*, 5 East, 238.

(*o*) *Clark v. Woods*, 17 L. J. M. C. 189; 3 New Sess. Cas. 213.

(*p*) *Collins v. Rose*, 5 M. & W. 194.

(*q*) 51 & 52 Vict. c. 43, s. 52. Special damage is recoverable, but if no more than 40s. without costs. 1, 27 & 28 Vict. c. 99, s. 25; S., 1 Vict. c. 41, s. 30; *Clark*, 1909, S. C. 299.

under warrants of justices. (r) And where they execute warrants of possession or for the recovery of tenements, they are under no liability on account of the person on whose application the warrant is granted having no lawful right to the possession of the premises. (s)

B. Where no adjudication.

B. WHERE NO ADJUDICATION

Liability where no jurisdiction in fact.

Protection.

Distinction between these orders and those of principal and agent.

It has been already pointed out that in the case of warrants and orders other than those of superior Courts at common law, the officer is under no liability for executing them where it appears on the face of the instrument either (1) that the Court or person issuing them had, or (2) apparently had jurisdiction to do so. But this is confined to cases where there has been an adjudication. Where, however, there has been no adjudication, the rule as to liability is a different one. Acting under such warrants and orders the officer is protected only where the person or body issuing them had jurisdiction to do so, and the execution thereof is strictly carried out. If there was apparently jurisdiction when none in fact or clearly none at all, the warrant or order is equally valueless. (t) But with this rule must be coupled the statute passed for the protection of officers acting under warrants of justices, and which is discussed above, the greater number of warrants of this class being issued by those judicial officers.

Where an act can be done in a legal manner, the person giving the direction is not responsible for the act done if it be carried out in an illegal manner unless the relation of master and servant (u) exists between the person giving the direction and the person executing it. (x)

C. Orders of local authorities.

C. ORDERS OF LOCAL AUTHORITIES

In regard to the other orders which have been enumerated above, (y) it is obvious that they divide themselves into two classes, namely, general and specific. In both of these the law of principal and agent strictly applies.

(r) See 11 & 12 Vict. c. 43, s. 3; 2 & 3 Vict. c. 71, s. 51. 1., 6 & 7 Will. IV. c. 13, s. 50. S., 8 Ed. VII. c. 65, s. 58.

(s) 1 & 2 Vict. c. 74, s. 5; 51 & 52 Vict. c. 43, s. 144. S., 27 & 28 Vict. c. 53, ss; 30, 85; 55 & 56 Vict. c. 55, s. 356. 1., 14 & 15 Vict. c. 92, s. 15.

(t) *Foster v. Dodd*, L. R. 3 Q. B. 76; *Wilkins v. Hemsworth*, 7 A. & E. 807;

Coghlan v. Woods, 10 L. R. Ir. 29. See *Papillon v. Duckner*, Hardr. 478.

(u) See *infra*.

(x) *Creagh v. Gamble*, 24 L. R. Ir. 458; *O'Byrne v. Hartington*, 1. R. 11 C. L. 445; *Bain v. Barnet*, 19 D. 405; *Hollands v. Richardson*, 6 D. 9; *Girdwood v. Midlothian*, 22 R. 11.

(y) *Ante*, pp. 252, 450, 550.

Where an officer is appointed by some person or body to do a class of acts, he becomes by virtue of his appointment the general agent of such person or body while acting in the performance of his duty. The liability in such cases of the principal has been thus stated: A person [or body] who puts another in his place to do a class of acts in his absence is answerable for the wrong of the person so entrusted, either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done; provided that what is done is not done from any caprice of the servant, but in the course of the employment.^(z) A local authority in their public capacity are liable for any negligence of their servants.^(a) Where, however, the officer is appointed or directed to do some particular thing and that only, the liability of the person or body so appointing or directing him is more limited. In such cases the agent only binds the principal when acting in strict accordance with his instructions.^(b) Moreover, the principal is in any case liable if the act complained of be one which was done for his benefit, whether or not there was any precedent authority, if the principal subsequently ratify the act.^(c) Where there is a violation of a right to property or to personal security, he who procures the wrong to be done is a joint wrongdoer, and may be sued either alone or jointly with the agent for the wrong done.^(d) If an assault or imprisonment of the plaintiff be the necessary or probable consequence of orders given by the defendant, he will be responsible, although he did not directly order it or contemplate the possibility of its occurrence.^(e)

Liability of principal and agent.

General agent.

Particular agent.

Ratification.

What is within or without the scope of the authority is matter of evidence. Where a servant wantonly and not in order to execute the master's orders, struck the plaintiff's horses and thereby produced an accident, the master was held not liable; but if in the course of the employment he so struck, although injudiciously, it would have been otherwise.^(f) Again, where

Evidence of authority.

^(z) Underhill, *Torts*, 6th ed., p. 61. See *Bayley v. Manchester Railway Co.*, L. R. 7 C. P. 415; and *Laugher v. Pointer*, 5 B. & C. 547; *Joyce v. Metropolitan Board of Works*, 44 L. T. 811; and cf. *Abrahams v. Deakin*, 63 L. T. 690; *Farry v. Marshall*, 1898, 2 I. R. 352.

^(a) *Hall v. Batley*, 47 L. J. Q. B. 148; *Joyce v. Metropolitan Board of Works*, 44 L. T. 811; *Mitchell v. Stuart*, 1 Rob. 162; *Larson v. Stewart*, 14 Fac. 507; *Tozeland v. West Ham*, 1907, 1 K. B. 920; *Levingston v. Lurgan*, 1 I. R. 2 C. L.

202. Cf. *Brennan v. Limerick*, 2 L. R. Ir. 42.

^(b) *Brady v. Todd*, 9 C. B. N. S. 592.

^(c) *Wilson v. Tummam*, 6 M. & Gr. 242; and see *Wilson v. Barker*, 4 B. & Ad. 614.

^(d) *Per Erle, J., Lumley v. Gye*, 2 El. & Bl. 216; *Barker v. Braham*, 2 W. Bl. 868; *Quinn v. Leatham*, 1901, A. C. 495.

^(e) *Glynn v. Houston*, 2 M. & G. 337; *Wood v. N. B. Ry.*, 1 F. 562.

^(f) *Croft v. Alison*, 4 B. & A. 590. See *Whatman v. Pearson*, L. R. 3 C. P. 422.

a servant wholly exceeded his authority in arresting a person and did an act which was illegal, not in the mode of doing it, but in the doing it at all, the principal was held irresponsible. (g) But where the act was one which the agent must be assumed to have authority to do, if there was a mistake in the performance of it, such mistake was held within the scope of the authority. (h)

The fact, however, of the principal becoming liable does not exonerate the agent from his liability for tortious acts done by him. He may therefore be sued either separately or jointly with his principal. (i)

Criminal
liability.

The relationship of principal and agent is unknown to the criminal law. If the principal direct the agent to do a criminal act, they are both liable as principals. (k) On the other hand, if the agent do a criminal act unknown to the principal but purporting to act by his authority, the principal is irresponsible. (l)

Liability of
principal.

With regard to the principals which are referred to in this class, the general rule as to their liability inasmuch as the powers which they exercise are conferred upon them by law, is that they are liable for any damage which has resulted from the doing of the act as individuals are; (m) but as the powers which are exercised are almost wholly derived from statute, due regard to the wording of the Act in question must be had in order to ascertain what liability exists in any particular case. And in such circumstances the general rule appears to be the following, namely, that where the duty imposed is discretionary, or at any rate not absolute, the ordinary law as to liability for damage occasioned obtains. (n) On the other hand, where the duty to be performed is of an absolute character, such liability is under the special circumstances negatived. (o) Again, if a public body is doing by their agents a work connected with their ordinary ministerial or administrative duties, that body will be liable for injury resulting from the commission of a negligent act on the part of a subordinate. (p) On the other hand, if the injury arises from

(g) *Poulton v. London and South Western Railway Co.*, L. R. 2 Q. B. 534.

(h) *Goff v. Great Northern Railway Co.*, 30 L. J. Q. B. 148. See *Gracey v. Belfast Co.*, 1901, 2 I. R. 326.

(i) *Lumley v. Gye*, *ubi sup.*; and see *Snowdon v. Davis*, 1 Taunt. 359.

(k) Steph. Dig. C. L. 28.

(l) 1 Hale 618: *Woodgate v. Knatchbull*, 2 T. R. 148.

(m) *Vaughan v. Taff Vale Railway Co.*, 5 H. & N. 679. See *Essex v. Acton*, 14 A. C. 154; *Midwood v. Manchester*, 1905, 2 K. B. 597.

(n) *Dunn v. B'mham Canal Co.*, L. R. 7 Q. B. 244; 8 *ib.* 42; *Boughton v. Midland and Great Western Railway Co.*, 7 Ir. R. C. L. 169; *Metropolitan Asylum District v. Hill*, 6 App. Cas. 193; *Canadian Pacific Railway v. Parke*, 1899, A. C. 535.

(o) *Brand v. Hammersmith Railway*, L. R. 1 Q. B. 130; 2 *ib.* 223; 4 H. L. 171; *Dixon v. Metropolitan Board of Works*, 7 Q. B. D. 423; and *Martin v. L. C. C.*, 80 L. T. 866; *Fremantle v. Annois*, 85 *ib.* 732; *Innes v. Edinburgh*, *Morr.* 13189; *Orr v. Currie*, 18 F. C. 625.

(p) *Levingston v. Lurgan*, I. R. 2 C. L.

the negligence or omission of a subordinate to comply with his instructions, he being a proper person for the post which he was appointed to fill, no action will lie against a public body. (*q*)

The employment of a contractor does not negative the principal's liability; he is still liable except for casual or collateral negligence on the part of the contractor. (*r*) But where an Act provides that on default by the local authority a superior board may make an order against them, an action by a party alleging injury will not lie, (*s*) and where compensation is provided for by the Act, that remedy must be pursued. (*t*) But if the powers of the Act have been exceeded, or the thing authorized has been negligently done, an action for damages must be brought. (*u*)

Contractor.

Compensation.

UNDER INHERENT POWERS

Under inherent powers.

Where a public officer acts, or purports to act, by virtue of the powers which the law confers upon him, and while so acting is guilty of any illegality by way of commission or omission, he is personally responsible to the individual who has sustained damage thereby. (*x*) Every one who is appointed to discharge a public duty and receives a compensation, whether from the Crown or otherwise, is constituted a public officer. (*y*)

Liability.

The liability, however, of such officers is not confined to cases where there has been either excess of the authority conferred or breach of the duty imposed by law. It extends also to cases where the officer is strictly within the powers conferred on him, but guilty of harsh and oppressive conduct in their exercise. (*z*) Where a Governor and Vice-Admiral of a Crown Colony suspended the judge of the Vice-Admiralty Court, but maliciously

202; *Southampton Co. v. Local Board*, 8 E. & B. 801.

(*q*) *Brennan v. Limerick*, 2 L. R. Ir. 42. See *Tozeland v. West Ham*, 1907, 1 K. B. 920.

(*r*) *Hardaker v. Idle*, 74 L. T. 69; *Penny v. Wimbledon*, 1899, 2 Q. B. 72; *The Shark*, 1900, P. 110; *Clements v. Tyrone*, 1905, 2 I. R. 542.

(*s*) *Robinson v. Workington*, 1897, 1 Q. B. 619. Cf. *Baron v. Portslade*, 83 L. T. 363.

(*t*) *Watkins v. Gt. Northern Railway*, 16 Q. B. 961; *Boydell v. Porter*, 13 East 200.

(*u*) *Clothier v. Webster*, 31 L. J. C. P. 316; *Stainton v. Woolrych*, 23 B. 233. As to the right to recover the cost of works executed as a volunteer, see *Ellis v. Bromley*, 81 L. T. 224. And as to work

done under compulsion, see *ante*, pp. 287, 347.

(*x*) *Lane v. Cotton*, 1 Ray. 646; 1 Salk. 17; *Tobin v. The Queen*, 16 C. B. N.S. 310; *Rowning v. Goodchild*, 2 W. Bl. 906; *Barry v. Arnaud*, 10 A. & E. 646; *Rogers v. Dutt*, 13 Moo. P. C. 209; *Walker v. Baird*, 1892, A. C. 491; *Raleigh v. Goschen*, 1898, 1 Ch. 73; *Mitchell v. Stuart*, 16 S. 409; *Lawson v. Stewart*, 14 F. C. 507; *Thomson v. Mitchell*, 1 Rob. Ap. 162. See *Burrows v. Rhodes*, 1899, 1 Q. B. 816; *Jones v. Monsell*, 1 R. 6 C. L. 155; *Bainbridge v. Postmaster General*, 1906, 1 K. B. 178.

(*y*) *Irwin v. Grey*, 3 F. & F. 635; and see *Terry v. Huntington*, Hard. 480; *Whitfield v. Ld. Despencer*, Cowp. 754.

(*z*) *Gibsons*, cited in 3 Macph. 1030.

and without reasonable and probable cause, although he had legal authority to do so until the King's pleasure became known and the King subsequently confirmed the suspension, he was held notwithstanding liable in damages. (a) The gist of the action was, admitting the legality of the suspension thus confirmed, but complaining of the defendant's exercise of his original authority, and his malicious and false representations by which the suspension had been confirmed. (b) Where moreover a legal privilege is used as a mere cloak for doing a wrongful act to the prejudice of another, it affords the wrongdoer no more protection and gives him no greater right than if the privilege had no existence. (c)

Joint wrong-
doers.

Whoever assists in the doing of an unlawful act becomes answerable for all the consequences of it, and when several persons have been jointly concerned in its commission they may generally all be charged jointly as principals, or the plaintiff may sue any of the parties upon whom individually a separate trespass attaches. (d) If several are jointly bound to perform a duty, they are liable jointly and severally for the failure or refusal. (e) And the same measure of liability attaches where several commit a trespass. (f) Judgment in an action against one of several joint trespassers is a bar to an action against the others for the same cause, although such judgment remains unsatisfied. (g) But the cause of action must in both suits be identical. (h)

Omnia præ-
sumuntur, etc.

Connected with the subject of liability is the principle which was illustrated in the case of *Armory v. Delamirie*, (i) namely, that contained in the maxim, "*Omnia præsumuntur contra spoliatores.*"

Every presumption shall be made to the disadvantage of a wrongdoer. If an officer use the powers which he possesses against an individual on any other than public grounds, he becomes a wrongdoer, and this principle is applicable. Where a person who wrongfully converted property, refused to produce

(a) *Sutherland v. Murray*, cited in *Sutton v. Johnstone*, 1 T. R. 493.

(b) *Per Erskine, arguendo, Sutton v. Johnstone*, *ubi sup.*; *Willes v. Bridger*, 2 B. & A. 286; *Beaton v. Ivory*, 14 R. 1057.

(c) *Hickman v. Maisey*, 1900, 1 Q. B. 752.

(d) *Mitchell v. Turbutt*, 5 T. R. 651. The act of the majority binds the minority: *Grindley v. Barker*, 1 B. & P. 229.

(e) *Fergusson v. Kinnoull*, 9 Cl. & F. 269.

(f) *Hume v. Oldacre*, 1 Stark. 352; *Grindley v. Barker*, 1 Bos. & P. 229; *Morrison*, 15 F. C. 279; *Bannerman v. Fenwicks*, 1 Mur. 253.

(g) *Brinsmead v. Harrison*, L. R. 7 C. P. 547; *Western Bank v. Baird*, 24 D. 859.

(h) *Slade*, 4 Rep. 94 b; *Guest v. Warren*, 9 Ex. 379.

(i) 1 Str. 504.

it, it was presumed as against him to be of the best description. (*k*) Where a person claimed a debt from another, the proof of which was to be found in certain documents which were sealed up and in his keeping, and he broke the packet without authority to do so, the claim was disallowed; (*l*) and where a necklace was missed and part of it traced to the defendant, who was unable satisfactorily to account for it, the whole necklace was presumed to have come to his hands. (*m*)

EVIDENCE

Evidence.

As to evidence, it is laid down that the fact that a person has acted in an official capacity is presumptive evidence of his appointment, and the formal appointment need not be proved; (*n*) and this rule applies to both civil and criminal cases. (*o*)

DAMAGES

Damages.

In general the damages will depend on the extent of the trespass or breach of duty committed. But where there is any high-handedness on the part of the officer, or attempt to use his powers unfairly to the prejudice of any member of the public, exemplary or vindictive damages will be recoverable; (*p*) and these must depend on the particular circumstances of the case. (*q*) And in such cases the court will not interfere with the discretion of the jury unless they are grossly excessive or clearly founded upon a mistaken or improper view of the matter. (*r*)

There is no power to charge the damages and costs recovered against an officer upon the public funds; (*s*) and it is the same with penalties. (*t*)

Not chargeable on public.

A sum due to an officer in respect of superannuation may, in the absence of direction by statute to the contrary, be attached in execution. (*u*)

Superannuation.

(*k*) 1 Str. 504.

(*l*) *Wardour v. Berisford*, 1 Vern. 452.

(*m*) *Mortimer v. Cruik*, 12 L. J. C. P. 166; and see *Sanson v. Rumsey*, 2 Vern. 561; *Dalston v. Coatsworth*, 1 P. Wms. 731; *Gartside v. Ratchife*, 1 Ch. Cas. 292; *Crisp v. Anderson*, 1 Stark. 35.

(*n*) *M'Gahey v. Alston*, 2 M. & W. 211; *Marshall v. Lamb*, 5 Q. B. 115; *Doe v. Young*, 8 ib. 63; *Dexter v. Hayes*, 11 I. C. L. R. 106.

(*o*) *M'Gahey v. Alston*, *ubi sup.*; *R. v. Gordon*, 1 Lea. 515; *R. v. Borrett*, 6 C. & P. 124.

(*p*) *Merest v. Harvey*, 5 Taunt. 442;

Embley v. Myers, 6 H. & N. 54; *Bell v. Midland Railway*, 10 C. B. N.S. 287.

(*q*) *Brunswick v. Stonan*, 8 C. B. 327; *Huckle v. Money*, 2 Wils. 205; *Hyslop v. Staig*, 1 Mur. 20.

(*r*) *Edgell v. Francis*, 1 M. & G. 222; *Tullidge v. Wade*, 3 Wils. 18; *Snare v. Fife*, 14 D. 332; *Reeves v. Penrose*, 26 L. R. Ir. 141.

(*s*) *Stops v. Northampton, JJ.*, 4 Ti. Rep. 78; *R. v. Exeter*, 6 Q. B. D. 135; *cf. Att.-Genl. v. Pearson*, 10 Jur. 651.

(*t*) *R. v. Wilts, JJ.*, 8 D. P. C. 717.

(*u*) *Booth v. Trail*, 12 Q. B. D. 8.

Trespass ab initio.

Connected with the subject of damages is the doctrine of *Trespass ab initio*. Where a power to enter upon lands or tenements is conferred by law on an individual, and when he has entered in pursuance thereof he commits a misfeasance (*i.e.* exceeds his authority), it shall be presumed that he entered with the intention of exceeding his authority, and that the trespass committed shall have relation back to the time of entering. In other words, whatever privilege he previously possessed is, by the excess, annulled. (*x*) Another instance is where the defendants commence by an unauthorized course of proceeding. (*y*)

(*x*) *Six Carpenters*, 8 Coke, 146. This rule is unknown in S.

(*y*) *Bell v. Oakley*, 2 M. & S. 259.

REMEDIES

Remedies.

PROTECTION

Protection.

1. *Prerogative*.—The Crown may, in the case of action arising against any of its officers, for anything done to which it is a party, (a) demand a trial at bar, on the ground that it has an interest in the subject-matter of the suit. (b) In that case it will be for “the plaintiff to show the Court that it is misinformed,” (c) and that the statement of the Attorney-General that the Crown is interested is groundless. If he fails to satisfy the Court as to this, the suit will be regulated by the Crown Suits Act, 1865, and the rules thereunder. The procedure in such a suit does not come within the scope of this work.

It may, however, be here observed that where the Crown has ratified and approved the conduct of the officer, it necessarily takes upon itself the responsibility for the act complained of, on the ground of the maxim: “*Omnis ratihabitio retrotrahitur et mandato priori æquiparatur*.” (d) But no damages can be obtained against the Crown, for “the Crown can do no wrong.” (e) In this event, therefore, if no compensation is provided by statute, (f) the plaintiff, if he be a foreigner abroad engaged in an act lawful by the laws of his own country, will notwithstanding still be entitled to redress though not in the courts of law; but the officer becomes irresponsible. (g) In all other cases the officer is still responsible. (h) “No authority is needed to establish that a servant of the Crown is responsible in law for a tortious act

Where Crown becomes responsible.

(a) See *ante*, p. 3.

(b) *Buron v. Denman*, 2 Ex. 167; *Dixon v. Farrar*, 18 Q. B. D. 43. On the Attorney-General waiving a trial at bar, he can demand a change of venue: 28 & 29 Vict. c. 104, s. 46. As to S., see 20 & 1 Vict. c. 44, s. 3; 31 & 32 Vict. c. 95. The Act does not apply to I.

(c) *Per Tindal, C.J.*; *Paddock v. Forester*, 8 Dowl. 834; *Rowe v. Brenton*, 3 M. & R. 133.

(d) *Buron v. Denman*, *ubi sup.* See

Poll v. Id. Advocate, 1 F. 823.

(e) 2 Rolle, Rep. 304.

(f) The revenue cannot be reached by an action against an official unless there is some legislative provision enabling this to be done. *Palmer v. Hutchinson*, 6 A. C. 619.

(g) *Buron v. Denman*, 2 Ex. 167.

(h) See *Parke, B.*, *Buron v. Denman*, 2 Ex. 189; *Casanova v. Queen*, L. R. 1 P. C. 268; *R. v. Casaca*, 5 A. C. 548; 18 & 19 Vict. c. 90.

done to a fellow-subject though done by the authority of the Crown." (i)

Where a party pursues both his civil and criminal remedies concurrently, it seems that the Attorney-General will not enter a *nolle prosequi* to the latter unless he is satisfied that they are vexatious or that they do not lie. (k) A *nolle prosequi* appears to put an end to such proceedings. (l)

2. *Statutory absolute.*

2. *Statutory Absolute.*—Constables are absolutely protected in the case of rioters being killed, maimed, or hurt while they are engaged in suppressing the riot. (m) The words of the section are: if the persons so unlawfully riotously and tumultuously assembled or any of them shall happen to be killed maimed or hurt in the dispersing seizing or apprehending or endeavouring to disperse seize or apprehend them, by reason of their resisting the persons so dispersing seizing or apprehending or endeavouring to disperse seize or apprehend them.

Customs and Excise officers are so protected for seizing goods as liable to forfeiture where there was probable cause for such seizure; (n) in stopping carts and waggons to search for smuggled goods, though none be found; (o) for firing into ships liable to seizure or examination not bringing to when required; (p) and for the seizure and detention of ships under the Foreign Enlistment (q) and Pacific Islanders Acts. (r)

A judge's certificate that there was probable cause for the seizure, covers the seizure only, and does not extend to damages for deterioration of the goods seized while in the officer's possession. (s)

The wreck receiver is so protected in case of a wreck where any person is killed, maimed, or hurt by reason of his resisting the receiver in the execution of his duty, (t) or any person acting under his orders.

And officers acting under the Explosives Acts are similarly protected where on reasonable cause to believe that any explosive, or ingredient of an explosive or substance found by them, is liable to forfeiture, they seize and detain the same. (u)

(i) *Per* Cockburn, C.J.; *Feather v. Reg.*, 6 B & S. 296.

(k) *Jones v. Clay*, 1 Bos. & P. 191; see *R. v. Fielding*, 2 Burr. 720.

(l) *R. v. Allen*, 1 B. & S. 850; *R. v. Mitchell*, 3 Cox C. C. 93. Private prosecution is practically unknown in S.

(m) 1 Geo. I. st. 2, c. 5, s. 3.

(n) 53 & 54 Vict. c. 21, s. 29; and see c. 56, s. 2, and L. 1 & 2 Will. IV. c. 55, s. 18. As to Merchant Shipping, see 57 &

58 Vict. c. 60, s. 76, where there is reasonable grounds for seizure and detention of a ship liable to forfeiture.

(o) 39 & 40 Vict. c. 36, s. 203.

(p) S. 181; and see s. 192.

(q) 33 & 34 Vict. c. 90, ss. 28, 29.

(r) 35 & 36 Vict. c. 19, s. 20; *Burns v. Nowell*, 5 Q. B. D. 444.

(s) *Laugher v. Brevitt*, 5 B. & Ald. 762.

(t) 57 & 58 Vict. c. 60, s. 514.

(u) 38 & 39 Vict. c. 17, s. 74.

And so are officers generally acting under the Public Health Acts, if the matter or thing were done *bona fide* for the purpose of executing the Acts. (x) And persons acting in pursuance of the Lunacy Act, 1890, in good faith and with reasonable care. (y)

3. *Statutory Ordinary*.—By 56 & 57 Vict. c. 61 (The Public Authorities' Protection Act, 1893), s. 1, protection is afforded to all officers acting, or neglecting to act, in supposed execution of their public duties when any action, prosecution, or other proceeding is commenced against them. (z)

Statutes of this nature have been held to be "required for the purpose of protecting these officers in those cases where they intended to act within the strict line of their duty, but by mistake exceed it." (a) Their object is "clearly to protect persons acting illegally, but in supposed pursuance and with a *bona fide* intention of discharging their duty." (b)

The defendant is entitled to the protection if he honestly believes in the existence of a state of things which, if it had existed, would have justified his doing the acts complained of. Some facts must exist such as might give rise to an honest belief, but it is not necessary that the belief should be reasonable. (c)

A County Court officer is protected while acting under warrant of the Court, although there was no jurisdiction to make the order on which the warrant was founded. (d) And so is a tax-collector if he *bona fide* believe a sum demanded to be due. (e) But not if there was no colour for the demand, or he makes an improper seizure, and takes a bribe to deliver up the goods, (f) or is guilty of extortion under threat of legal proceedings or distress. (g)

Protection is conferred whenever the officer purports to act in pursuance of the authority. (h)

(x) *Ibid.* c. 55, s. 265; 54 & 55 Vict. c. 76, s. 124. S., 60 & 61 Vict. c. 38, s. 166. I., 41 & 42 Vict. c. 52, s. 264; and see as to fish, 54 & 55 Vict. c. 20, s. 5.

(y) 53 & 54 Vict. c. 5, s. 330.

(z) *The Ydon*, 1899, P. 236; *The Johannesburg*, 1907, P. 65. The section does not apply to appeals nor interlocutory applications: *Fielden v. Morley*, 1900, A. C. 133. See *Spittal*, 6 F. 828, and *Lanarkshire*, 8 ib. 777, and as to a tram worked by a local authority, *Lyles v. Southend*, 1905, 2 K. B. 1.

(a) *Per Kenyon, C.J.*; *Greenway v. Hurd*, 4 T. R. 553. *Ferguson v. McEwen*, 14 D. 457.

(b) *Per Ellenborough, C.J.*; *Theobald v. Crichtmore*, 1 B. & A. 229; *M^r Ternau v.*

Bennett, 1 F. 333; *Rae*, 2 R. 669. See *Dudgeon v. Robertson*, 21 D. 351.

(c) *Chamberlain v. King*, L. R. 6 C. P. 474; *Rockfort v. Rynd*, 8 L. R. Ir. 204. See *Booth v. Clive*, 10 C. B. 827; *Smith v. Hopper*, 9 Q. B. 1014; *Beechey v. Sides*, 9 B. & C. 806; *Cann v. Clipperton*, 10 A. & E. 589; *Griffith v. Taylor*, L. R. 2 C. P. D. 194.

(d) *Aspey v. Jones*, 54 L. J. Q. B. 98.

(e) *Waterhouse v. Keen*, 4 B. & C. 211; *Spitty v. Kitchin*, 15 W. R. 903.

(f) *Irving v. Wilson*, 4 T. R. 486.

(g) *Umphelby v. McLean*, 1 B. & A. 42.

(h) *Cook v. Leonard*, 6 B. & C. 351; *Jones v. Gooday*, 9 M. & W. 736; *Wilson v. Edinburgh*, 7 F. 168. See *R. Aquarium v. Parkinson*, 1892, 1 Q. B. 431.

3. *Statutory ordinary.*

When available.

It appears, however, to apply only to such acts as the officer might at the time have been called upon to perform. (*i*) And the officer is not deprived of his right because he has received an indemnity against the consequences of his act by the party interested. (*k*)

An officer who takes under a County Court warrant the goods of B. by mistake for those of A. is entitled to protection. (*l*)

But where a constable is authorized to arrest a person found committing an offence, it must be shewn that at the time of the arrest he believed the offence to have been committed, and that he had found the person arrested in the act of committing it; (*m*) unless taken *in flagrante delicto*, it must be shewn that an offence had been committed, that the plaintiff was on the spot, that there was reasonable ground for believing that the mischief was still going on, and that the plaintiff was the author and instigator of it. (*n*)

Officers sued to recover back money paid which had been by mistake illegally demanded, are protected, (*o*) and so were surveyors acting *bona fide* in a public capacity. (*p*)

Limitation.

The Act provides that no action shall be brought except within six months (*q*) after the act complained of, (*r*) or, in case of continuance of injury or damage, within six months after the ceasing thereof. (*s*) An action is commenced at the issue of the writ. (*t*) In false imprisonment, the time is reckoned exclusive of the day of discharge of the prisoner. (*u*) Where constables searched under warrant without saying they were so authorized, the prescribed limitation was held to apply, (*x*) and so was it where they took the goods of B. believing them to be those of A. (*y*) Where there has been a seizure of goods and a subsequent

(*i*) *Bryson v. Russell*, 14 Q. B. D. 720.

(*k*) *White v. Morris*, 11 C. B. 1015.

(*l*) *Burling v. Harley*, 3 H. & N. 271.

(*m*) *Roberts v. Orchard*, 2 H. & C. 769. See *Macpherson*, 14 R. 1063.

(*n*) *Cann v. Clipperton*, *ubi sup.* See *Danvers v. Morgan*, 1 Jur. N. S. 1051.

(*o*) *Greenway v. Hurd*, 4 T. R. 553.

(*p*) *Hardwick v. Moss*, 7 H. & N. 136; *Selmes v. Judge*, L. R. 6 Q. B. 724.

(*q*) For a case where the Act was held not to apply and a twelve months' limitation allowed under another Act, see *Kent v. Folkestone*, 1905, 1 K. B. 620.

(*r*) Where the plaintiff dies his representatives can only sue where he could have sued if alive: *Williams v. Mersey Bd.*, 1905, 1 K. B. 804; *Gawley v. Belfast*, 1908, 2 L. R. 34.

(*s*) See *Wordsworth v. Hurley*, 1 B. & Ad. 391; *Lundie v. Macbrayne*, 21 R. 1085; *Cree v. St. Pancras*, 1899, 1 Q. B. 693. As to road trustees S., see *Stewart v. Banff*, 8 S. L. R. 387. The time may extend to six years: *Harrington v. Derby*, 1905, 1 Ch. 205.

(*t*) *Original Co. v. Gibb*, 5 Ch. D. 719; *Order v.*, r. 11; *M'Tervan v. Bennett*, 1 F. 333.

(*u*) *Hardy v. Ryle*, 9 B. & C. 603. *Melvin v. Wilson*, 9 D. 1129; *Lennox v. Rose*, 2 S. 650.

(*x*) *Smith v. Wiltshire*, 2 B. & B. 619. *Hill v. Dymock*, 19 D. 955; *Magrane v. Gilbourne*, Ir. T. R. 135; *Wilchkin v. Gahan*, *ib.* 591; *Polley v. Fordham*, 1904, 2 K. B. 345.

(*y*) *Parton v. Williams*, 3 B. & A. 330.

order for re-delivery the time must be reckoned from the original seizure. (z)

Where the proceeding is an action for damages, tender of Amends. amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. (a) The payment of money into Court, by way of amends, does not necessarily conclude the plaintiff. (b)

In general, where judgment is for the defendant, it shall carry costs as between solicitor and client. (c) Where the proceeding Costs. is an action for damages, if commenced after tender of amends, or proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs as between solicitor and client, as from the time of tender or payment, but this provision shall not affect costs of any injunction in the action. If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding, the Court may award to the defendant costs as between solicitor and client. (d)

Where the defendant makes an affidavit that the plaintiff if unsuccessful will be unable to pay costs, and the plaintiff fails thereupon to give security for such costs, the action may be Remission to county court. remitted to the County Court. (e)

(z) *Saunders v. Saunders*, 6 R. R. 424.

(a) Order xxii. and County Court Rules, 1903, Order ix. As to S., 55 & 56 Vict. c. 55, ss. 506, 507, and 27 & 28 Vict. c. 53, s. 30.

(b) *Boyfield v. Porter*, 13 East 200. As to pleading the general issue, see *Att.-Gen. v. M'Cormack*, 1903, 2 I. R. 517.

(c) *Bostock v. Ramsey*, 1900, 2 Q. B. 616; *Aird*, 1907, S. C. 305. Otherwise in discontinuance: *Smith v. Northleach, R. D. C.* 85 L. T. 449. As to appeals, see *Ambler v. Bradford*, 1902, 2 Ch. 585; *Aberchirder v. Bamff*, 8 F. 571, and *per* Ld. Pearson, *Aird*, *ubi sup.*

(d) 56 & 57 Vict. c. 61, s. 1; *Harrop v. Ossett*, 1898, 1 Ch. 525; *N. Met. Tramways v. London, C. C.*, *ib.* 2 Ch. 145; *Shaw v. Hertford, C. C.*, 1899, 2 Q. B. 282; *Greenwell v. Howell*, 1900, 1 Q. B. 535. This Act does not exclude local S. Acts—s. 3; *Duncan v. Hamilton*, 5 F. 160. The local Acts which confer protection are: 48 Geo. III. c. 110, ss. 58, 59; 8 & 9 Vict. c. 83, s. 86; 13 & 14 Vict. c. 92, s. 10; 55 & 56 Vict. c. 55, s. 506; 60 & 61 Vict. c. 38, s. 165, and 3 Edw. VII. c. 25, s. 104.

(e) 51 & 52 Vict. c. 43, s. 66. No similar enactment in S. or I.

Breach of duty.

BREACH OF DUTY (a)

Civil proceedings.

CIVIL PROCEEDINGS

Action for damages.

Action for Damages

Where a person undertakes a public office, he is bound to perform the duties of the office, and if he neglects or refuses so to do, and an individual in consequence sustains injury therefrom, that lays the foundation for an action for damages to recover compensation for the injury so sustained. (b)

Duty at common law.

When a duty or obligation exists at common law independently of a statute, a new remedy given by a statute is simply cumulative, and does not preclude the ordinary common law remedy by way of action, unless there are express words to that effect. (c)

Statutory.

When a statute creates a right or duty, then although it has not in express terms given a remedy, the remedy which by law is properly applicable follows as an incident. (d) But if the right or duty is entirely the creature of the statute, and a specific remedy is provided by the statute for its enforcement, that remedy and that only must be pursued, (e) unless the remedy does not cover the entire right. (f)

Must be absolute.

These principles apply apparently only when the duty to be performed is an absolute one, and not within the discretion of the officer. The rule as to liability may therefore be thus stated. Wherever the law confers upon an officer a power to do a certain act by an obligatory (g) as distinguished from an enabling (h)

(a) Every breach of duty or excess of power against an individual is an offence against the representative of the sovereign people, and an offence not only on the part of the particular officer concerned but which includes in its ambit every other officer representing executive authority, and which as time does not run in such a case is incurable. This is the constitutional position which no Act of Parliament can reach or affect, and it is this position which is referred to when it is said that the action of the executive fosters discontent.

(b) *Sutton v. Johnstone*, 1 T. R. 493;

Ferguson v. Kinnoull, 9 Cl. & F. 279.

(c) *Chapman v. Pickersgill*, 2 Wils. 145. Cf. *Maguire v. Liverpool*, 1905, 1 K. B. 767.

(d) *Per Maule, B., Brailhwaite v. Skinner*, 5 M. & W. 327.

(e) *Stevens v. Jewcocke*, 11 Q. B. 741; *St. Pancras Vestry v. Batterbury*, 2 C. B. N. S. 477; *R. v. Philbrick*, 1905, 2 K. B. 108.

(f) *Shepherd v. Mills*, 11 Ex. 67. As to pleading in actions under statute, see *Holmes v. Sparkes*, 12 C. B. 251.

(g) *E.g.*, "is hereby required."

(h) *E.g.*, "may" or "it shall be lawful." See *Julius v. Oxford (Bishop of)*,

enactment, there is then a corresponding duty in the officer to perform the act required, in which if he fail, he will be liable to an action at the suit of the person who has sustained damage by reason of his default. On the other hand, if the duty is optional or discretionary, no such liability (in the absence of malice) exists. (i) But to this there is an important qualification. "It has been so often decided as to have become an axiom, that in public statutes words only directory, permissive or enabling, may have a compulsory force when the thing to be done is for the public benefit or in advancement of public justice, (k) and this has been held to mean that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require its exercise. (l)

Qualification.

In practice, however, where a duty is conferred, although it is possible, yet it is not very probable that action would arise owing to the fact that the plaintiff had sustained damage by reason of the officer's neglect.

But there is a notable exception in the case of civil execution. There a person is entitled to put an officer in motion to do a certain act or acts, and if he fails to perform the duty so required of him, it gives rise to this action. Practically confined to civil execution.

[In Scotland, every officer of the law is bound to serve the lieges in the way of his office, on tender of his reasonable expenses. And like all persons who carry on business for hire, he must possess the necessary art and skill for performing it correctly, and he must give due and faithful attention to its performance, otherwise he and his cautioners will be liable for the damage sustained both by his employers and the opposite party. (m) If he proceed notwithstanding a sist of which he has knowledge he will be liable. And so is he if the defenders' names be not properly inserted. (n) He is absolutely bound to give a good execution, and if it be defective he will be liable.] (o)

5 App. Cas. 214; *McDougall v. Paterson*, 11 C. B. 755; *Crake v. Powell*, 2 E. & B. 210; *Bell v. Crane*, L. R. 8 Q. B. 481; *Re Newport Bridge*, 29 L. J. M. C. 52. Cf. *Mulcahy v. Kilmacthomas*, 18 L. R. Ir. 200.

(i) See *Partridge v. Council of Medical Education*, 25 Q. B. D. 90.

(k) *Per Coleridge, J., R. v. Tithe Com- P.O.*

missioners, 14 Q. B. 474.

(l) *Per Cairns, C., Julius v. Oxford (Bishop of)*, *ubi sup.*; and see the judgment of *Ld. Herschell in Cowley v. Newmarket*, 67 L. T. 488.

(m) *Kennedy*, 1 S. 210.

(n) *Clason v. Black*, 4 D. 743.

(o) *Brock v. Kemp*, 6 D. 709. See *Potter v. Muirhead*, 9 D. 519; and as to

The officers concerned in civil execution are the sheriff, (p) the Admiralty marshal, and the high bailiff, (q) who so far as liability is in question may be considered one, (r) and constables.

Sheriff.

Limit of liability.

Neglect.

As regards the sheriff, it has been laid down that if he neglect or refuse to execute any writ when he has the opportunity and is required to do so, he is liable, (s) but that he is not liable for not using extraordinary exertion or providing against an unexpected or unforeseen contingency. (t) Accordingly, if he neglects to execute within a reasonable time, (u) or to seize, (x) or to sell or sells for less money than he ought to have obtained, (y) or sells the goods of a third person, (z) or relinquishes or abandons possession, (a) he is liable although mere temporary absence, (b) or withdrawing under a proper order is not sufficient. (c) So also is he if he negligently conduct a sale whereby the position of the execution creditor is prejudiced, (d) or sells by private contract, when entitled to do so, before actual seizure, (e) or retains the goods and pays the plaintiff, (f) or delivers the goods to the plaintiff in satisfaction of the debt, (g) or executes the writ and retains in his hands the proceeds. (h) But the execution creditor cannot sue the sheriff before the issue of the *venditioni exponas*, (i) nor is he liable if he sell under a *venditioni exponas*, (k) under an extent which is in from the Crown at the same time. (l)

An application for an order against a sheriff to pay money levied under an execution must be made by motion after

general liability, *Dykes v. Strathers*, VII. Bell App. C. 390. As to costs, 31 & 32 Vict. c. 100, s. 40.

(p) S., messenger-at-arms.

(q) S., sheriff's officer.

(r) Judicature Act, 1873, s. 84; and see *Wms. & B. Ad. Prac.*, 2nd ed., p. 249; 51 & 52 Vict. c. 43, s. 35. *Clyne v. Murray*, 9 S. 338. I., see 30 & 31 Vict. c. 114, s. 10.

(s) *Brown v. Jarvis*, 1 M. & W. 704; *Mason v. Paynter*, 1 Q. B. 974. *King v. Steecenson*, H. 344; *Miller*, 15 F. C. 750; *Chatto v. Marshall*, 16 ib. 121; *Glen v. Black*, 4 D. 36. As to a civil bill decree l., see *Simmonds v. Henchy*, 16 L. R. Ir. 467.

(t) *Hodgson v. Lynch*, 5 Ir. R. C. L. 353.

(u) *Clifton v. Hooper*, 6 Q. B. 468; *Mason v. Paynter*, 1 Q. B. 974; *Wilson v. Snody*, 19 F. C. 268; *Gilechrist v. Sutherland*, M. 8892.

(x) *Pitcher v. King*, 5 Q. B. 766. He must have notice that the goods are in his bailiwick; *Yourrell v. Proby*, 1 R. 2 C. L. 460. As to replevin, *Sabourin v. Marshall*,

3 B. & Ad. 440; *Tesseyman v. Gildart*, 1 B. & P. N. R. 292.

(y) *Jacobs v. Humphrey*, 2 C. & M. 413; *Carlile v. Purkins*, 3 Stark. 163; *Gawler v. Chaplin*, 2 Ex. 506.

(z) *Oughton v. Seppings*, 1 B. & Ad. 241.

(a) *Blades v. Arundale*, 1 M. & S. 711; *Bower v. Nett*, 1895, 2 Q. B. 337. In S. the officer cannot discharge the debt unless expressly authorized. *Camp. cap. xxxv.* See *Davidson v. Allen*, 20 L. R. Ir. 16.

(b) *Ackland v. Paynter*, 8 Price 99.

(c) *Darby v. Waterlow*, L. R. 3 C. P. 453; *Cullen v. Smith*, 9 D. 606; *Ferrier v. Aitken*, 2 S. 513; *Nixon v. Maguire*, 1 R. 5 C. L. 92.

(d) *Mullett v. Challis*, 16 Q. B. 239.

(e) *Ex parte Hall*, 14 Ch. D. 132; *Ex parte Villars*, 9 Ch. Ap. 432.

(f) *Waller v. Weedale*, Noy. 107.

(g) *Thomson v. Clerk*, Cro. Eliz. 504.

(h) *Perkinson v. Gifford*, Cro. Car. 539.

(i) *Clutterbuck v. Jones*, 15 East 78; *Ruston v. Hatfield*, 3 B. & A. 204.

(k) *Srain v. Morland*, 1 B. & B. 370.

(l) *Thurston v. Mills*, 16 East 254.

notice. (*m*) And where he neglected to recover a claim was added to that of damages for money received by him to the plaintiff's use. (*n*) The remedy of the landlord, however, is *in tort*, and not for money had and received. (*o*)

He is also liable if he make a false return—that is, a return False return. to the writ which does not describe accurately the position of affairs. (*p*) But if the sheriff merely return the answer of the bailiff which proves to be false, he is not, it appears, responsible. (*q*) A writ is not now returned to by order, but a notice to return from the person issuing the writ or his solicitor issues. (*r*) The return must answer the whole mandate of the writ. He may return *nulla bona* where the debtor has an equitable interest only, (*s*) and also where the proceeds are exhausted in payment of prior rent and charges; (*t*) but not where there are goods in his hands unsold, (*u*) nor where he ought to have levied and neglected to do so. (*x*) If he returns that he has seized certain goods, he ought to specify their value; (*y*) but he cannot return that a house is barricaded and he cannot enter to see what goods are there, (*z*) nor return rescue. (*a*)

In order to claim the benefit of the Interpleader Act he must Interpleader. be in possession of the goods (*b*) as a whole, (*c*) unless the property would be injured by seizure. (*d*) He must not be an interested party, (*e*) nor have been indemnified, (*f*) but he need not wait for an action to be brought. (*g*) Where he has exercised his discretion he is not entitled to relief, (*h*) nor where he is guilty of neglect (*i*) or laches, (*k*) except under special circumstances. (*l*) He must inquire into the *bona fides* of the claims before applying for relief. (*m*)

(*m*) Order lii., rr. 2, 3; and see *Delmar v. Freemantle*, L. R. 3 Ex. D. 237.

(*n*) *Bower v. Hett*, *ubi sup.*, see *post*, p. 672.

(*o*) *Green v. Austin*, 3 Camp. 260.

(*p*) *Wylie v. Birch*, 4 Q. B. 566; *Glen v. Black*, 4 D. 36; *Kelly v. Browne*, 12 L. R. Ir. 354.

(*q*) *Jackson v. Hill*, 10 Ad. & E. 477; and see *ante*, p. 623.

(*r*) Order liii., r. 11.

(*s*) *Scarlett v. Hanson*, 12 Q. B. D. 213.

(*t*) *Windle v. Freeman*, 11 A. & E. 539; *Shuttock v. Corden*, 6 Ex. 725; *Needham v. Kelly*, 3 Ir. L. R. 181.

(*u*) *Stule v. Hawley*, 13 M. & W. 757; *Hurton v. Ballinrobe*, 11 Ir. L. R. 24.

(*x*) *Dennis v. Whetham*, L. R. 9 Q. B. 345.

(*y*) *Barton v. Gill*, 12 M. & W. 315.

(*z*) *Munk v. Cuss*, 9 Dowl. 332.

(*a*) *Wat.*, p. 97.

(*b*) *Ireland v. Bushell*, 5 Dowl. 147; *Scott v. Lewis*, 4 Dowl. 259.

(*c*) *Braine v. Hunt*, 2 Dowl. 391; *Moore v. Hawkins*, 43 W. R. 235.

(*d*) *Lea v. Rossi*, 11 Ex. 13; 24 L. J. Ex. 280.

(*e*) *Bralldick v. Smith*, 9 Bing. 84; *Ostler v. Bower*, 4 Dowl. 605.

(*f*) *Ibid.*

(*g*) *Green v. Brown*, 3 Dowl. 337. This process does not apply when the right of the Crown is in question; *Candy v. Mangham*, 13 L. J. C. P. 17.

(*h*) *Crump v. Day*, 4 C. B. 760.

(*i*) *Brackenbury v. Laurie*, 3 Dowl. 180.

(*k*) *Crump v. Day*, *ubi supra*.

(*l*) *Dixon v. Ensell*, 2 Dowl. 621.

(*m*) *Bishop v. Hingman*, 2 *ib.* 166; *Sodeau v. Shorey*, 74 L. T. 240; Order lvii., rr. 16, 16a, 17.

Deceased
sheriff.

For neglect of duty the representatives of a deceased sheriff are also liable. (*n*)

Damage.
Malice.

An action against the sheriff in these cases cannot be maintained without shewing actual pecuniary damage, (*o*) but where damages are alleged and proved, they are recoverable without proof of malice or want of probable cause. (*p*)

[In Scotland it is no defence to shew that the goods had been seized by the Crown and were sealed up under a writ of extent, or that the party was rendered notour bankrupt by sequestration within one month. (*q*) But the instructions must be precise. (*r*) It is no answer that delay has not produced damage. (*s*) The law presumes that had the instructions been obeyed the debt would have been recovered.]

False return.

In an action for a false return, the sheriff may show the facts in support of his defence, (*t*) but he cannot go into circumstantial evidence to impeach the judgment on the ground of collateral fraud. (*u*)

Admissions.

Admissions of the hailiff in these cases are evidence against the sheriff, (*x*) but not those of the under-sheriff unless they accompany some official act or tend to charge himself. (*y*)

Damages.

The measure of damages in cases of neglect of duty by the sheriff is usually the value of the goods. (*z*) The plaintiff is entitled to be placed in the same position as if the defendant had done his duty. (*a*) But regard must be had to all the probabilities. (*b*)

Statutory
liability.

By 56 Geo. III. c. 50, s. 9, the sheriff is not liable for damages for anything done under that Act (*c*) unless there be wilful omission on his part.

By 50 & 51 Vict. c. 55, s. 29, the sheriff or his officer for any breach of the provisions of that Act or neglect or default in the execution of his office is liable to forfeit £200 and to pay all

(*n*) *Packington v. Culliford*, Abr. Roll. 921, Exors. H. 2; *Adair v. Shaw*, 1 Sch. & Lef. 265. *Morrison v. Cameron*, 15 F. C. 279.

(*o*) *Hobson v. Thellusson*, L. R. 2 Q. B. 642; *Stimson v. Farnham*, L. R. 7 Q. B. 175; *Moon v. Raphael*, 2 Sc. 489; 7 C. & P. 115; *O'Dowd v. Kirwan*, I. R. 11 C. L. 75.

(*p*) *Brasyer v. Maclean*, L. R. 6 P. C. 398.

(*q*) *Chatto*, 16 F. C. 121.

(*r*) *Winterbottom*, 2 S. 452; *Ferrier*, *ib.* 601.

(*s*) *Wilson v. Snoddy*, 19 F. C. 268; *Gilchrist v. Sutherland*, *ubi sup.*

(*t*) *Wintle v. Freeman*, *ubi supra*.

(*u*) *Tyler v. Duke of Leeds*, 2 Stark. 222.

(*x*) *North v. Miles*, 1 Camp. 389.

(*y*) *Snowball v. Goodericke*, 4 B. & Ad. 541.

(*z*) *Tyler v. Leeds*, *ubi supra*. In S. it is the debt: *Gilchrist v. Sutherland*, *ubi sup.*

(*a*) *Crowder v. Long*, 8 B. & C. 598; *Heenan v. Evans*, 3 M. & Gr. 398; *Augustien v. Challis*, 1 Ex. 279.

(*b*) *Hobson v. Thellusson*, *ubi sup.*; *Bales v. Wingfield*, 2 N. & M. 831; *Hoog*, M. 10096.

(*c*) *Ante*, p. 230.

damages suffered by any person aggrieved. (*d*) This applies apparently only to personal misconduct or neglect on the part of the officer actually guilty thereof, and in such case the sheriff, therefore, is not responsible for the act of his officer, (*e*) and it does not apply to mere wrongful seizure, (*f*) nor to an unintentional overcharge. (*g*)

But if he make out a warrant prior to the receipt of the writ this action will lie against him, (*h*) and so also will it if he omit to appoint a deputy. (*i*)

As has been above stated, the liability of the Admiralty marshal is identical with that of the sheriff. Admiralty marshal.

As regards the high bailiff, besides the ordinary liability (*k*) High bailiff. which is the same as that of the sheriff it is enacted that:—

In case any bailiff who shall be employed to levy any execution against goods and chattels shall by neglect or connivance or omission lose the opportunity of levying any such execution, then, upon complaint of the party aggrieved by reason of such neglect, connivance or omission (and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness), the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby. (*l*)

This power of the judge does not extend over the high bailiff of a foreign Court. (*m*)

The only case in which constables are employed in civil Constables. execution at the suit of an individual is that for the recovery of tenements. (*n*)

And, as regards other officers it has been held that an action Other officers. lies against a postmaster for non-delivery of letters, (*o*) and a collector of customs for refusing to sign a bill of entry without payment of an excessive duty, (*p*) and a highway surveyor for leaving large stones on a road under repair so placed as to cause an obstruction. (*q*) But that he was not bound to remove

(*d*) See 21 Jac. 1, c. 4, s. 4; and *Spencer*, 3 M. & W. 154; *Jones v. Williams*, 4 ib. 375. 1., see 57 Geo. III. c. 68, s. 3.

(*e*) *Bagge v. Whitehead*, 1892, 2 Q. B. 355.

(*f*) *Lee v. Dangar*, 1892, 2 Q. B. 337.

(*g*) *Shoppee v. Nathan*, 1892, 1 Q. B. 245.

(*h*) *Hall v. Roche*, 8 T. R. 187.

(*i*) *Bruckenhury v. Laurie*, 3 Dowl. 180.

(*k*) See *Willey v. Hucks*, 1909, 1 K. B. 760.

(*l*) 51 & 52 Vict. c. 43, s. 49; *Watson v. White*, 1896, 2 Q. B. 9. No similar

enactment in S. or I., but see *Couper v. Buin*, 7 M. 102.

(*m*) *R. v. Shropshire County Court*, 20 Q. B. D. 242.

(*n*) 1 & 2 Vict. c. 74, 14 & 15 Vict. c. 92; 7 Edw. VII. c. 51, s. 34. As to liability for delivery of stolen goods to other than the true owner, see *Winter v. Bancks*, 84 L. T. 504.

(*o*) *Rowning v. Goodchild*, 2 W. Bl. 906. But see *Hordern v. Dalton*, 1 C. & P. 181.

(*p*) *Barry v. Arnaud*, 10 A. & E. 646.

(*q*) *Fearnley v. Ormsby*, L. R. 4 C. P. D. 136.

nuisances, (r) nor liable for mere non-repair. (s) It lies also against a minister for refusing admission to the church on proper occasions, (t) or for removing without authority a monument appended to the wall of the church, (u) against churchwardens for refusing admission to the church at service time of a parishioner, (x) and against a gaoler for penalties who refuses to give within six hours after demand a copy of the committal of any prisoner in his custody. (y)

Withholding
evidence.

As to evidence, if it is withheld it renders the maxim *Omnia præsumuntur contra spoliatores* applicable. (z) Where a party has the means in his power of rebutting and explaining the evidence against him, if it does not tend to the truth, the omission to do so furnishes a strong inference against him. (a) Where a public officer produces an instrument the execution of which he was bound to procure, as against him it is presumed to have been duly executed. (b) And if it be defaced or destroyed slight evidence of the contents will usually be sufficient. (c) The general rule in these cases is that the law excludes such evidence as from the nature of the thing supposes still better evidence in the party's possession or power. (d)

(r) *Morgan v. Leach*, 10 M. & W. 558.

(s) *Young v. Davis*, 2 H. & C. 197. See *A.-G. v. Stafford*, 1905, 1 Ch. 336.

(t) *Lee v. Matthews*, 3 Hagg. 173.

(u) 1 Inst. 18 b.

(x) *Taylor v. Tinson*, 20 Q. B. D. 671.

As to refusal to accept bail, see *Andrew v. Murdoch*, 2 S. 399.

(y) 31 Car. 2, c. 2, s. 5, S. 1701, c. 6. A demand on the turnkey, the gaoler being accessible, is not sufficient to subject the gaoler to the penalty. *Huntley v.*

Luscombe, 2 B. & P. 530. A constable is an officer within this Act, *Hudson v. Ash*, 1 Str. 167.

(z) See *ante*, p. 632.

(a) 3 Stark. Evidence, 3rd ed., p. 937.

(b) *Scott v. Walthman*, 3 Stark. 168; *Plumer v. Brisco*, 11 Q. B. 52.

(c) 1 Phil. Evidence, 10th ed., pp. 477, 478.

(d) *Twyman v. Knowles*, 13 C. B. 222; *Lumley v. Wagner*, 1 De G. M. & G. 604, 635.

CRIMINAL PROCEEDINGS

Criminal proceedings.

Attachment

Attachment.

In the case of the sheriff, Admiralty marshal, and high bailiff, all of whom are officers of the Court, this remedy is open to any person aggrieved by the neglect to perform the duty required of them. (*a*)

By 50 & 51 Vict. c. 55, s. 29, if any sheriff, under-sheriff, Sheriff, etc. bailiff, or officer of a sheriff is guilty of any breach of the provisions of the Act, or of any neglect or default in the execution of his office, he may be punished by the Court as for a contempt. (*b*)

In regard to the Admiralty marshal, as he is now an officer of the High Court, his liability is identical with that of the sheriff. (*c*)

As to the high bailiff, it is laid down by 51 & 52 Vict. c. 43, s. 131, that in case of refusal to act, any party requiring the act to be done may apply to the High Court for an order calling on the officer to show why it should not be done, and that upon the officer's then making default, attachment may issue. (*d*)

The incidents of attachment will be found stated below in the next chapter. (*e*)

Information

Information.

In the case of all officers other than those mentioned under the head of *attachment*, the remedy under the criminal law for breach of duty is by information at the suit of the party grieved. To what officers applicable.

The majority of statutes which confer powers include penalties for breaches of public duty by the officers on whom the powers are conferred.

Every public officer commits a misdemeanour who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary

(*a*) Of course all officers who refuse to obey the mandates of the Courts are like other persons liable to attachment or committal. See *R. v. Winton*, 5 T. R. 89. An order for attachment or committal must be applied for on notice, Order xlv., r. 2; *Jupp v. Cooper*, 5 C. P. D. 26; *Eynude v. Gould*, 9 Q. B. D. 335; *Fowler v.*

Ashford, 45 L. T. 46. As to S., see note, *post*, p. 696. *Burke v. D'Arcy*, 9 Ir. L. R. 287; *Richardson v. Donegal*, Batty 591.

(*b*) See Hawk. P. C. II. c. 22, ss. 2, 3, 4.

(*c*) Judicature Act, 1873, s. 84.

(*d*) S. 1, Vict. c. 41, s. 34. L., 27 & 28 Vict. c. 99, s. 6.

(*e*) *Post*, p. 696.

When open to individual.

Withholding evidence.

Refusing admission to prisoner.
Bail.

Non-repair of highway.

firmness and activity may be expected to encounter. (f) Breaches of public duty are not, however, remediable at the suit of a private individual, unless he is able to prove that he has sustained actual damage by reason thereof. (g) An instance of breach of public duty is the withholding of material evidence. This is presumably perjury. (h) A constable is bound to state in cross-examination if required by the judge or presiding magistrate to do so, the circumstances under which he had seen the facts to which he testified. (i) Another instance is where an officer refuses admission to a lock-up or place of detention, of a counsel or solicitor for a prisoner awaiting trial who is retained for his defence, or other person properly claiming to be admitted, (k) or refuses to take bail when required by law to do so. (l)

It has been held, however, that an indictment did not lie against a highway-surveyor for non-repair of the highway, (m) but he might be summoned for this (n) or for allowing heaps to remain on the highway at night to the danger of passengers, (o) or for damaging mills, etc., (p) or neglect to fill up pits. (q)

Mandamus

Mandamus.

A word should be here inserted on *mandamus*. It is a prerogative writ issuing in the King's name and directed to a public officer requiring him to do a particular thing appertaining to his office and duty. (r) In its application it is confined to cases where no effectual relief can be obtained in the ordinary course of an action. (s) And inasmuch as the cases in which damages could occur on account of breach of duty which are not obtainable by action are very rare; it is a remedy which for practical purposes need not be further discussed. (t)

(f) Steph. Dig. Crim. Law, Art. 122; *R. v. Pinney*, 5 C. & P. 254. As to the criminal liabilities of officers, see *R. v. Hall*, 1891, 1 Q. B. 747.

(g) See *Soltan v. De Held*, 2 Sim. N. S. 133. In S. private prosecution is practically unknown.

(h) Hawk. P. C. I. e. 69, s. 2.

(i) *R. v. Richardson*, 3 F. & F. 693; *Webb v. Catchlove*, 82 L. T. (N.) 103. See *Marks v. Beyfus*, 25 Q. B. D. 494; *Steven v. Dundas*, M. 7905; *Henderson v. Robertson*, 15 D. 292; *Hill v. Fletcher*, 10 D. 7.

(k) See 40 & 41 Viet. c. 21, s. 56. In S. & L. this is provided for by rules.

(l) See *ante*, p. 422, and *R. v. Badger*, 4 Q. B. 468.

(m) *R. v. Dixon*, 12 Mod. 198.

(n) 5 & 6 Will. IV. c. 50, s. 94. S., 41

& 42 Viet. c. 51, s. 123.

(o) *Fearnley v. Ormsby*, L. R. 4 C. P. D. 136.

(p) 5 & 6 Will. IV. c. 50, ss. 56, 57, 72. No similar enactments *semble* in S. or I.

(q) S. 55.

(r) Steph. Comm., 8th ed., III. 615; *R. v. Bank of England*, 2 B. & Ald. 622. It does not go to inferior officers: *Per Kenyon, C.J., R. v. Bristol*, 6 T. R. 170.

(s) *R. v. Chester*, 1 T. R. 396; *Ex parte Robins*, 1 W. W. & H. 578; *In re Nathan*, 12 Q. B. D. 461. See *Pasmore v. Oswald-wistle*, 1898, A. C. 387.

(t) See *R. v. Fox*, 2 Q. B. 246; *R. v. Scott*, *ib.* 248, n.; and *R. v. Wilts, JJ.*, 8 Dowl. P. C. 717. Unknown in S. As to an action of *mandamus*, see Order liii., and *Davies v. Gas Co.*, 1909, 1 Ch. 243.

EXCESS OF POWER

Self-Defence

*Excess of
power.*

Self-defence.

The first remedy which the law permits a man, against whom an excess of legal authority (*a*) is being committed, to resort to, is that which can be applied on the spur of the moment—namely, self-defence. The law in reference thereto is as follows: It sanctions the defence of a man's person, liberty and property against illegal violence, and permits the use of force to prevent crimes . . . yet all this is subject to the restriction that the force used is necessary, that is, that the mischief sought to be prevented could not be prevented by less violent means, and that the mischief done by, or which might reasonably be anticipated from the force used is not disproportioned to the injury or mischief which it is intended to prevent. (*b*) But the defence of possession either of goods or lands against a mere trespass not a crime, does not, strictly speaking, justify even a breach of the peace. The party in lawful possession may justify gently laying his hands on the trespasser and requesting him to depart. If the trespasser resists, and in so doing assaults the party in possession, that party may repel the assault, and for that purpose may use any force which he would be justified in using in defence of his person. (*c*)

The rule that a man shall retreat from an assailant before he uses force applies only to the use of such force as may inflict grievous bodily harm or death. (*d*) If an officer be killed while exceeding his authority it is manslaughter only. (*e*)

Fabrication of Evidence (f)

*Fabrication of
evidence.*

The fabrication of evidence, from a civil point of view, renders the maxim *Omnia præsumuntur contra spoliatorem*

(*a*) *Lex neminem ad malefaciendum hortatur; neque licentiam ulli peccandi facit.*

(*b*) *Crim. Code Rept.*, p. 11. See *R. v. Spencer*, 3 F. & F. 854; *Beatty v. Gillbanks*, ante, p. 42; *McClenaghan v. Waters*, *Times*, 18th July, 1882; *Dowie*, 1 S. App. 125.

(*c*) *C. C. Report*, p. 45. *Macfurlane v. Young*, 3 Mur. 408; *Bell*, 7 S. L. R. 267.

(*d*) 1 Hawk. P. C. c. 28, s. 24.

(*e*) *Dixon*, 1 East P. C. 313; *Tooley*, 2 Ray. 1296. *R. v. Delany*, *Jebb Cr. & Pr. Cas.* 88.

(*f*) Fabrication is not entirely unknown as a government expedient for

applicable to the case. (g) From a criminal point of view, if it consists in procuring false witnesses, it is subornation of perjury, and if the party tampered with does not actually take an oath, the person inciting him so to do, though not guilty of subornation, is still liable to punishment. (h) In cases other than witnesses it is a misdemeanour at common law. (i)

Of fabrication, the following are examples: Placing a pistol-ball in a tree in order to show that a pistol, when discharged, was loaded with ball; soiling clothes to give the appearance of a struggle; fitting shoes to marks in earth or snow to connect the owner of the shoes with the offence; planting on a person or on his premises articles, the possession of which is unlawful, or shows a connection with an offence; putting a portion of a newspaper into the pocket of a prisoner, his clothes being detained at a police station, the corresponding portion being found at the scene of the crime; tampering with witnesses, including that of inducing another officer to swear falsely as to a fact.

The procuring of evidence by improper means does not appear to be either actionable or an offence. The remedy would seem to be complaint to the authorities, unless it amounts to inciting to commit offences. (k)

political ends. The only remedy in such cases is a ceaseless vigilance by an enlightened public over the acts and proceedings of officers of all kinds.

(g) See *ante*, p. 632, and Broom Leg. Max., 5th ed., 939, 942; and *per* Mountenay, B., 17 St. Tr. 1430; *Norden's Case*, Fost. Cr. Law, 129. See also Taylor on Evidence, 6 edit. p. 72, where he says, "With respect to policemen constables and others employed in the suppression and detection of crime their testimony against a prisoner should usually be watched with care; not because they intentionally pervert the truth but because their professional zeal, fed as it is by an habitual intercourse with the vicious and by the frequent contemplation of human nature in its most revolting form, almost necessarily leads them to ascribe actions to the worst motives and to give a colouring of guilt to facts and conversations which are perhaps in themselves consistent with perfect rectitude. That all men are guilty till they are proved to be innocent is naturally the creed of the police." And again on p. 82, "Something occurs to raise a suspicion against a particular party. Constables and police officers are imme-

diately on the alert, and with professional zeal, ransack every place and paper and examine into every circumstance which can tend to establish not his innocence but his guilt. Presuming him guilty from the first, they are apt to consider his acquittal as a tacit reflection on their discrimination or skill and with something like the feelings of a keen sportsman, they determine if possible to bag their game. Innocent action may thus be misinterpreted — innocent words misunderstood; and as men readily believe what they anxiously desire, facts the most harmless may be construed into strong confirmation of preconceived opinions. . . . The feelings by which they are actuated, are common to . . . all persons who first assume that a fact or system is true and then seek for arguments to support and prove its truth."

(h) 1 Hawk. P. C. c. 69, s. 2.

(i) Crim. Code Rept., p. 21; *R. v. Vreones* [1891], 1 Q. B. 360; *Smith*, 1 Irv. 125.

(k) See *post*, p. 703, and *R. v. Merthyr*, 10 The Rep. 189. As to using such evidence, see *Rattray*, 25 R. 315; *Crook v. Duncan*, 1 F. 50, and *cf. Forbes*, 1908, S. C. 46.

CIVIL PROCEEDINGS

*Assault and Battery**Civil proceedings.**Assault and battery.*

An assault is an attempt or offer to beat another without touching him, as if one lifts up a cane or his fist in a threatening manner at another or strikes at but misses him. A battery (which includes an assault) is the unlawful beating of another—the least touching of another's person wilfully or in anger, *(l)* and this whether with the person or with any missile or weapon. *(m)*

The fact of an assault being unintentional does not make it less an assault; *(n)* but it may be urged in mitigation of damages; *(o)* but if the act be neither wilful nor negligent no action will lie. *(p)*

In the following cases it was held that an assault had been committed:

Where A was advancing in a threatening attitude with an intention to strike B, so that his blow would have almost immediately reached B if he had not been stopped, though at the particular moment when A was stopped he was not near enough for his blow to take effect. *(q)* An examination by medical men in pursuance of an order of a magistrate of the person of a female in custody upon the charge of concealing the birth of her illegitimate child. *(r)* Riding after a person and obliging him to run away into a garden to avoid being beaten. *(s)* Striking a man in a crowd for refusing to stand back, which he was unable to do for the crowd behind him, *(t)* or for interfering with an officer engaged in preventing a breach of the peace. *(u)* Where plaintiff being in defendant's workshop and refusing to quit when desired, the defendant and his servants surrounded him and threatened to break his neck if he did not go out, whereupon the plaintiff, apprehensive of violence, departed. *(x)* Where a constable stopped a cyclist riding without light after nightfall. *(y)*

(l) 3 Black. 120. *Hyslop v. Staig*, 1 Mur. 20; *Wood v. N. B. Ry.*, 1 F. 562.

(m) *Pursell v. Horn*, 8 A. & E. 602; *Tullis*, 13 S. 698.

(n) *Covell v. Laming*, 1 Camp. 497; *McLaren*, 21 D. 183.

(o) *James v. Campbell*, 5 C. & P. 372.

(p) *Stanley v. Powell*, 7 T. L. R. 25. *Macfarlane v. Young*, *ubi sup.*

(q) *Stephens v. Myers*, 4 C. & P. 349.

An effigy was forcibly taken away by an officer from a person in a procession and it was alleged by way of excuse that the officer thought it belonged to a hostile

demonstration. How this would have afforded a defence had an action been brought is not clear. But see *Humphries v. Connor*, 17 I. C. L. R. 1.

(r) *Agnew v. Johnson*, 13 Cox C. C. 625. *Coupland*, 4 Irv. 370.

(s) *Martin v. Shoppee*, 3 C. & P. 373. *Ewing v. Mar*, 14 D. 314.

(t) *Imason v. Cope*, 5 C. & P. 193.

(u) *Levy v. Edwards*, 1 C. & P. 40. See *Burlinson*, Ir. Circ. Rep. 600.

(x) *Read v. Coker*, 13 C. B. 850.

(y) *Hatton v. Treby*, 1897, 2 Q. B. 452.

A threat to shoot a person, coupled with the act of presenting a loaded firearm at him, although it is half-cocked. (z)

In the following cases, no assault was held to have been committed:—

No assault.

Where A comes up to attack B, and B puts himself into a fighting attitude to defend himself. (a) Presenting a loaded pistol, coupled with words showing no intention to shoot the plaintiff. (b) Where A seized the bridle of the horse on which B was riding, and B, after a request to desist, struck A with his riding-whip, using no more force than was necessary to obtain his release. (c) Where a constable was wholly passive and merely obstructed the entrance of a person into a room as any inanimate object would, (d) or where an officer of a local fire-brigade excluded a person in pursuance of orders from premises on which a fire was raging. (e)

As regards threatening gestures, if the parties at the time the gestures are used are so far distant from each other that immediate contact is impossible, there is no assault. (f)

Procedure.
Certificate of
justices.

With reference to procedure it is laid down that where the assault has been heard and determined by justices, a certificate by such justices of conviction or acquittal is a bar to all further proceedings. (g) Such a certificate cannot be granted on an *ex parte* statement, (h) but to be valid it need not be granted at the time the summons is heard. (i)

Pleading.

In a civil action, that the defendant consented to the assault is a good defence, (j) and therefore the defence of leave and licence amounts to not guilty. (k) The defence to complete justification must answer severally the assaults specified in the claim. (l) That of *molliter manus imposuit* is a good defence to a battery. (m) But if there be violence it is negatived. (n) As

(z) *Osborne v. Veitch*, 1 F. & F. 317. *Blackwood*, 1 Irv. 223.

(a) *Moriarty v. Brooks*, 6 C. & P. 684. *Lang v. Lillie*, 4 Mur. 86; *Mackenzie v. Gray*, 1 F. 23.

(b) *Blake v. Barnard*, 9 C. & P. 626.

(c) *Rowe v. Hawkins*, 1 F. & F. 91. *Kennedy*, 1 Irv. 533.

(d) *Innes v. Wylie*, 1 C. & K. 257. See *Wallace v. Mooney*, 12 R. 710; and *Coyne v. Tweedy*, 1898, 2 I. R. 167.

(e) *Carter v. Thomas*, 1893, 1 Q. B. 673.

(f) *Cobbett v. Grey*, 4 Ex. 744. *Mackintosh v. Squair*, 40 J. 561; *Irving*, Bell's notes, 88.

(g) 24 & 25 Vict. c. 100, ss. 44, 45. See *Holden v. King*, 46 L. J. Ex. 75; and *Masper v. Brown*, 1 C. P. D. 97; *Dyer v.*

Munday, 1895, 1 Q. B. 722. The above-cited Act does not apply to S. See *Wood v. N. B. Ry.*, 1 F. 562; 27 & 28 Vict. c. 53, s. 30; and *Wilson v. Bennet*, 6 F. 269.

(h) *Reed v. Nutt*, 24 Q. B. D. 669.

(i) *Hancock v. Somes*, 28 L. J. M. C. 196; *Costar v. Hetherington*, *ib.* 198.

(j) *R. v. Coney*, 8 Q. B. D. 534; *Beatson v. Drysdale*, 2 Mur. 153.

(k) *Christopherson v. Bare*, 11 Q. B. 473. See *Wilson v. Bennet*, 6 F. 269.

(l) *Bush v. Parker*, 4 M. & Sc. 588.

(m) *Titley v. Foxall*, 2 Ld. Ken. 308.

(n) *Oakes v. Wood*, 2 M. & W. 791; *Gregory v. Hill*, 8 T. R. 299; *Johnson v. Northwood*, 1 Moo. 420; 7 Taunt. 689. *Macfarlane v. Young*, *ubi sup.*; *McGilvray v. Main*, 3 F. 397.

to the defence of *son assault demesne*, this admits the assault. (o) But it is a good defence provided there be no excess. (p) Where A and B are joint defendants, that does not prevent A pleading a justification to another and separate assault. (q)

To justify a battery the defendant must show that there was Evidence. an unlawful resistance on the part of the plaintiff to the lawful acts of the defendant. (r) A sheriff's officer, it has been held, can only justify laying his hand upon a man in order to arrest him on a writ of process, (s) or in case of resistance or an attempt to rescue him. (t) A plea justifying an assault on the ground that it was committed in dispersing a meeting, must either allege as a fact that the meeting was unlawful, or state facts from which its unlawfulness can be inferred. (u) Where plaintiff sued defendant for assault in taking him under a *habeas corpus*, after he had requested him not to do so, the writ having issued at the instance of the plaintiff, there being no sufficient evidence that the defendant knew at whose instance the writ issued, the assault was held justifiable. (x) Upon issue taken on a plea of *son assault demesne* it is necessary to prove an assault commensurate with the trespass sought to be justified. (y) But the defendant may give evidence of an assault by the plaintiff without this plea. (z) And in any action of assault, though he has not pleaded justification, he may in cross-examination extract evidence in mitigation of damages. (a)

As to damages, the Court will seldom interfere with the Damages. discretion of the jury, and the jury may take into consideration circumstances which go to aggravate or mitigate the injury sustained. (b) Where the assault has been carried to the extent of *mayhem* or wounding, heavy damages will be recoverable unless it be excused or justified. (c) Wherever the wrong is of a grievous nature, done with a high hand, or is accompanied with a deliberate intention to injure, or with words of contumely and abuse, the jury are authorized in giving vindictive damages. (d)

(o) *Hay v. Kitchin*, 1 Wils. 171.

(p) *Blunt v. Beaumont*, 2 C. M. & R. 412; *Dean v. Taylor*, 11 Ex. 68. See *Rimmer v. Rimmer*, 16 L. T. 238.

(q) *Kearney v. Tottenham*, 15 W. R. 1020.

(r) *Gregory v. Hill*, *ubi sup.* See *Mason v. Orr*, 4 F. 220.

(s) *Harrison v. Hodgson*, 10 B. & C. 445.

(t) *Truscott v. Carpenter*, 1 Ray. 229; *Williams v. Jones*, 2 Str. 1049.

(u) *O'Kelly v. Harvey*, 10 L. R. Ir.

285; 14 *ib.* 105.

(x) *Herring v. Hudson*, 3 Ex. 107.

(y) *Reece v. Taylor*, 4 N. & M. 470.

(z) *Syers v. Chapman*, 2 C. B. N. S. 438.

(a) *Moore v. Adam*, 2 Chit. 193; *Linford v. Lake*, 3 H. & N. 276; *De Goulouin v. Lewis*, 10 A. & E. 120.

(b) *Tullidge v. Wade*, 3 Wils. 18; *Forgie v. Henderson*, 1 Mur. 418.

(c) *Bac. Ab. Maihem*.

(d) *Thomas v. Harris*, 27 L. J. Ex. 353.

Limitation. This action must be commenced within four years next after the cause of such action. (*e*)

*Extortion.**Extortion*

Civil execution.

The cases which arise under this head are, as in the case of action for damages, (*f*) mainly those concerned with civil execution. It will be advisable, therefore, to set out here the fees and charges which are payable to officers concerned in this process.

Those of other officers where there are any, will be found stated with the powers enumerated in former parts of the work.

Sheriff.

As regards the sheriff, he is entitled to charge the fees and poundage which were charged, prior to the Sheriffs Act, 1887, until altered in pursuance of this Act. (*g*)

Poundage.

The poundage allowed is for the first £100, 5 per cent., and afterwards 2½ per cent. (*h*)

Fees.

The fees are as follows:— (*i*)

For every warrant which shall be granted by the sheriff to his officer upon any writ or process:—

	£	s.	d.
In London or Middlesex	0	2	6
And on outlawry process, an additional	0	2	6
In other counties, where the most distant part of the county shall not exceed 100 miles from London	0	5	0
Not exceeding 200 miles	0	6	0
Exceeding 200 miles	0	7	0
Where there are several defendants in a writ of <i>capias</i> , and warrants are issued thereon by the under-sheriff against more than one defendant, no more shall be charged in any case for each warrant, after the first, than	0	2	6
For an arrest in London	0	10	6
In Middlesex, not exceeding one mile from the G. P. O.	0	10	6
Not exceeding seven miles from the same place	1	1	0
In other counties, not exceeding a mile from the officer's residence	0	10	6
Not exceeding seven miles	1	1	0
Exceeding seven miles	1	11	6
For conveying the defendant to gaol from the place of arrest, (<i>k</i>) per mile	0	1	0
For an undertaking to give a bail bond	0	10	6

(*e*) 21 Jac. I. c. 16, s. 3. As to costs S., see 31 & 32 Vict. c. 100, s. 40; 1., 16 & 17 Vict. c. 113, s. 20.

(*f*) *Ante*, p. 640, and see 7 & 8 Vict. c. 19; S., 1 & 2 Vict. c. 118, s. 20; 6 Geo. IV. c. 48, s. 19; 1., 27 & 28 Vict. c. 99, s. 15.

(*g*) 50 & 51 Vict. c. 55, ss. 20, 39.

(*h*) Poundage is limited to civil process: *R. v. Sheriff of Devon*, 3 Dowl. 10; *R. v. Palmer*, 2 East 411—except where the debt is due to the Crown and is secured by a penalty which the levy does not exceed:

R. v. Deane, 2 Anst. 369; or where the Crown is entitled to its costs and charges, West 237. In S. the officer must not take any sum from the defendant or become the purchaser of the goods: *Paterson v. Philip*, Hume, 278.

(*i*) 7 Will. IV. & 1 Vict. c. 55, s. 3. So much of this order as relates to process at the suit of the Crown annulled. See 9 Q. B. 599.

(*k*) See *Cooper v. Hill*, 6 C. B. N. S. 703.

For a Bail Bond

		£	s.	d.
If the debt do not exceed	£50	0	10	6
"	" 100	1	1	0
"	" 150	1	11	6
"	" 300	2	2	0
"	" 400	3	3	0
"	" 500	4	4	0
If it shall exceed	500	5	5	0
For receiving money under the statute upon deposit for arrest, and paying the same into Court, if in London or Middlesex		0	6	8
If in any other county		0	10	0

For Filing the Bail Bond

If the arrest be made in London or Middlesex	0	2	0
If in any other county	0	4	0

Assignment of Bail or other Bond

If in London or Middlesex	0	5	0
If in any other county, including postago	0	7	6
For the return of any writ of <i>habeas corpus</i> , if one action	0	12	0
For each action after the first	0	2	6
For the bailiff to conduct prisoner to gaol, per diem	0	10	6
And travelling expenses, per mile	0	1	0
To the bailiffs for executing warrants on extent, <i>capias ultagatum, ne exeat</i> , attachment, <i>elegit</i> , possession, forfeited recognisance, and other like matters, for each, if the distance from the sheriff's office or the bailiff's residence do not exceed five miles	1	1	0
If beyond that distance, per mile	0	0	6
Bond of indemnity besides stamps	1	10	0
Certificate of execution having issued for record	0	5	0

The following fees may now be charged for execution of writs of *fi. fa.*, under order of 31st of August, 1888:—

1. For expenses incurred by the sheriff's officer in making inquiries as to the *Fi. fa.* goods of an execution debtor, and as to claims for rent and other claims on the goods, the actual expenses not exceeding under any circumstances £1 1s.

2. For seizure by the sheriff's officer. For each building or place separately rated at which a seizure is made, £1 1s.

3. For mileage, to include the mileage of the bailiff or the man in possession, per mile from the sheriff officer's residence, 1s.

The foregoing shall be paid by the execution creditor, and shall not be recoverable by him, although the execution proves abortive.

4. For man in possession, per day, 5s.

To provide his own board in every case.

5. For removal of goods or animals to a place of safe keeping, when necessary, the actual cost.

6. When goods or animals are removed, for warehousing and taking charge of the same (including feeding of animals), 2½ per cent. on the value of the goods or animals removed, or the sum endorsed on the writ of execution, whichever is the less. No fees for keeping possession of the goods or animals to be charged after the goods or animals have been removed.

7. For the inventory and valuation, cataloguing, lotting and preparing for sale,

when no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, $2\frac{1}{2}$ per cent. on the value of the goods. (l)

8. For advertising and giving publicity to the sale by auction, the sum actually and necessarily paid.

9. For commission to the auctioneer on a sale by auction, $7\frac{1}{2}$ per cent. on the sum realised, not exceeding £100; £5 per cent. on the next £100, £4 per cent. on the next £200, and on any sum exceeding in all £500, £3 per cent. up to £1000, and $2\frac{1}{2}$ per cent. on any sum exceeding £1000.

10. For any sale by private contract, half the percentage allowed on a sale by auction.

11. Poundage and fee for delivery of writ as before.

The foregoing fees 2, 3, 4, 5, 6, 8, 9, 10 and 11 shall be levied in every case in which an execution is completed by sale, as fees payable to sheriffs were levied before the making of this order. In every case where an execution is withdrawn, satisfied, or stopped, (m) the fees under this order shall be paid by the person issuing the execution, (n) or the person at whose instance the sale is stopped, as the case may be; and the amount of any costs and charges payable under this scale shall be taxed by a Master of the Supreme Court or District Registrar of the High Court (as the case may be), in case the sheriff and the party liable to pay such costs and charges differ as to the amount thereof. (o)

The fees in Bankruptcy and Companies winding-up are as follows:

	£	s.	d.
Serving every bankruptcy notice bankruptcy petition or (p) subpoena or receiving [or winding-up] (q) or other order (not serviceable by post) within two miles including affidavit of service	0	3	6
If serviceable by post	0	1	0
Executing every warrant of seizure or search warrant or warrant of apprehension or order of commitment within two miles of the Court	0	10	0
Keeping possession under a warrant for each day the man is actually in possession including affidavit of possession being actually kept	0	4	6
Not less than 3s. 6d. of the above sum is to be paid to the man in possession and his receipt produced.			
High bailiff or—in London district—officers' men travelling to place of possession or to execute a warrant of or order of commitment or to serve a summons or subpoena or for any other purpose specially directed by the Court, per mile	0	0	5
[His time per day where distance exceeds 10 miles]	0	4	6
His expenses per day	0	4	6
If high bailiff of county court or bankruptcy officer of Supreme Court directed by the Court personally to travel, per mile	0	0	7
His time per day	0	10	0
His expenses per day	0	10	0
[The Treasury may reduce the fees where the head office of the Company is situate out of England and the liquidation takes place partly in			

(l) This does not apply to seizure of a ship: *Cohen v. De las Rivas*, 39 W. R. 539; 64 L. T. 661.

(m) See *Lee v. Dangar*, 1892, 2 Q. B. 337; *Pirie v. Stewart*, *inf.*

(n) Where the sheriff puts a man in possession under a writ issued by one creditor and afterwards receives other writs from other creditors and has kept the same man in possession he cannot on the executions being withdrawn recover

possession-money from more than one creditor: *Glasbrook v. David*, 1905, 1 K. B. 615.

(o) There is no appeal from this taxation: *Townend v. Sheriff of Yorkshire*, 24 Q. B. D. 621.

(p) Bankruptcy Rules, 18, 12, 90.

(q) Companies Rules, 2, 12, 1903. Except as stated in square brackets these are identical.

£ s. d.

England and partly elsewhere or where the Court has sanctioned a reconstruction of the Company or a scheme of arrangement of its affairs or where for any other reason the official receiver satisfies the Board of Trade that they are excessive.]

Fees in the Admiralty Marshal's Office (r)

92. On the execution of a warrant (s)	2	0	0
93. On the execution of an attachment for every person attached	1	0	0
94. On the execution of any decree order commission or other instrument under Order LXVII	1	0	0
95. On attending appointing and swearing appraisers	1	0	0
96. On delivering up a ship or goods to a purchaser agreeably to the inventory	1	0	0
97. On attending the delivery of cargo or sale or removal of a ship or goods per day	2	0	0
98. On retaining possession of a ship with or without cargo or of a ship's cargo without a ship to include the cost of a ship keeper if required per day	0	5	0
99. On a report as to sufficiency of sureties	0	10	0
100. If the marshal or any of his substitutes is required to go a greater distance than 5 miles from his office to perform any of the above duties he shall be entitled to his reasonable expenses for travelling board and maintenance in addition to the above fees.			
101. On the sale of any vessel or goods sold pursuant to a decree or order of the Court for every £50 or fraction of £50 realised	0	10	0

Table of Fees charged by Messengers in Edinburgh

For executing (t) summonses hornings protests arrestments and other diligences including delivery of copy writing citation and execution if 300 words or under, paying witnesses and returning the execution—first copy (u)	0	3	6
If more than one defender and in the same dwelling-house, each other copy	0	2	0
If in separate dwelling-houses, each other copy	0	2	6
If forth of the kingdom, first copy	0	3	6
each other copy	0	2	0
For inhibitions, etc., first copy to the party	0	5	0
Each other copy to parties	0	3	6
Copy at market cross	0	5	0
In addition to the above charges when the execution exceeds 300 words then for every entire quantity of 300 words or part of 300 words after the first	0	1	6
For travelling each mile from the messenger's residence exclusive of copies and no charge returning	0	1	6
Denunciations, first defender	0	1	6
each other	0	0	6
For apprehending and imprisoning a defaulter on a warrant including composition for risk where there is little trouble:—			
If the debt be under £20 from 7s. 6d. to	0	12	6
Each assistant	0	1	6

(r) Order as to Supreme Court Fees, missioners of the Court of Justice.
1884. (u) As to service by registered letter,

(s) See *The Rendsberg*, 6 Rob. 142. see *infra*.

(t) A. S., 1772. See 10th Report Com-

P.O.

	£	s.	d.
Detention with the debtor with a view to a settlement or in carrying him to prison—for one hour from	5s.	0d.	to 0 7 6
Each assistant			0 1 6
Every additional hour including assistants			0 3 6
Debts from £20 to £50 from	15s.	0d.	to 1 1 0
Each assistant			0 2 6
Debts from £50 to £100 from	25s.	0d.	to 2 2 0
Each assistant			0 3 0
And for every £50 or part of £50 after the first £100 the sum of			0 10 6
Besides the allowance for travelling per mile when going a distance chaise hire or other needful conveyance when necessary chargeable in addition to the above rates and a proper and moderate allowance for incidental expenses and maintenance of the party.			
Assistants to be paid according to distance and trouble. For a whole day trouble and maintenance not to exceed 7s. 6d. to each but exclusive of travelling for which there is a charge for each per mile			0 0 6
For arresting a defaulter in prison from	7s.	6d.	to 0 10 6
according to amount of debt.			
Arresting vessels of every class and description			0 7 6
Each assistant			0 1 6
But exclusive of boat hire when necessary.			
For dismantling vessels lying in harbour besides assistants carpenters and sailors when necessary—			
Small sloops			0 15 0
Large sloops and brigs			1 10 0
Ships			2 2 0
For taking the oath of a complainer on letters of lawburrows			0 5 0
Service copies as in other diligence.			
For making a search on a caption or warrant in a dwelling-house shop or manufactory and returning execution, but exclusive of assistants			0 10 6
For poindings—			
To the messenger and party going to execute poindings but prevented from proceeding on account of lockfast places and returning execution			0 7 6
Executing letter of open doors including witnesses but exclusive of locksmiths, etc., and expense of poinding			0 5 0
[These two last items seldom occur in consequence of the alteration in writs introduced by 1 & 2 Vict. c. 114.]			
	Messenger's fee.		Appraisers each and witnesses.
	£	s. d.	£ s. d.
If the appraised value be under £5	0	5 0	0 1 6
£5 and under £10	0	7 6	0 2 0
10 " " 20	0	12 6	0 2 6
20 " " 30	0	15 0	0 3 6
30 " " 50	1	1 0	0 4 0
50 " " 70	1	5 0	0 5 0
70 " " 100	1	11 6	0 6 0
100 " " 150	2	2 0	0 7 0
150 " " 200	2	12 6	0 7 6
And for larger debts at the rate of			0 10 6
for every £50 or part of £50 appraised value in addition to the above rates for the first £200 of the debt.			
Extending execution of poinding, each sheet			0 1 0
Catalogue and granting certificate for Excise, each sheet			0 1 6

	£	s.	d.
In executing poindings at a distance the usual rate of travelling in addition to the above,			
Messenger per mile	0	1	6
Each appraiser and witness	0	1	0
For making copies of summonses and other writs for service where not furnished by the agent or party, per sheet	0	1	0
For writing necessary letters to employers remitting money recovered and reporting state of diligence, etc., including booking	0	2	0

FEES FOR SERVICE OR CITATION BY REGISTERED LETTER AND FOR RETURNING EXECUTION (x)

A. Court of Session

1. Parties—			
If one party	0	3	6
If more than one for each party after the first	0	2	6
2. Witnesses—			
For citing each witness	0	2	6
3. Post office charge and Registration and Postage of Letter—			

B. Inferior Courts

1. Parties—			
For citing to small debt, etc., claim not exceeding £5	0	1	0
Claim above £5 not exceeding £12	0	1	6
For citing to debts recovery court	0	2	0
For citing to ordinary court or any other citation not above included	0	2	6
Where there are more parties than one cited in the same cause and only one execution is necessary, the above-mentioned fees respectively shall be allowed for the first party only and two-thirds thereof for every other.			
2. Witnesses—			
(1) Small debts and debts recovery, etc.:—			
For citing one witness	0	1	0
For citing every witness after the first for the same debt	0	0	8
(2) Ordinary court:—			
For citing one witness	0	1	6
For citing every witness after the first for the same debt	0	1	0
3. Post office charge for Registration and Postage of Letter.			

As to Ireland—The Sheriff's fees in the High Court are contained in R. S. C. 1893, App. S. Pt. IV.

	£	s.	d.
1. For the warrant issued upon any writ process or order by the sheriff to the bailiff wherever appointed by the sheriff or the party. (y)	0	2	6
(Only one warrant shall be allowed for upon any one writ process or order except in cases where there shall be more than one defendant and it shall be necessary to execute such writ process or order at more than one place; and the sheriff shall give credit for this fee against any fees to which he may become entitled on executing the same writ process or order.)			

(x) 45 & 46 Vict. c. 77 Sch. There appear to be no special fees in banking and companies winding-up.

(y) He is entitled to this fee on the

lodgment of the writ with him, and on the writ being renewed to an additional fee of the same amount on the renewal: *Wren v. Stokes*, 1897, 1 L. R. 451.

	£	s.	d.
2. For executing a writ process or order of arrest other than an order of committal under the 6th section of the Debtors Act, 1872:—			
If the arrest be made at a place not exceeding 3 statute miles from the sheriff's office by the nearest public road	0	10	6
If at a place exceeding 3 statute miles (z)	1	1	0
(The sheriff shall give credit for these fees respectively against any fees to which he may become entitled on executing the same writ process or order.)			
3. For conveying a person arrested under any writ process or order of arrest from the place of arrest to gaol per statute mile	0	1	0
4. For executing any writ or order under which possession is given of any land house or tenement	2	6	2
5. For executing a writ of delivery of chattels if executed at a place not exceeding 3 statute miles from the sheriff's office by the nearest public road	0	10	6
If executed at a place beyond that distance	1	1	0
6. For the bailiff or bailiffs for executing a warrant or any writ process or order if executed at a place not exceeding 5 statute miles from the sheriff's office by the nearest public road one sum of	0	10	0
If executed at a place beyond that distance one sum of 6d. per statute mile one way in addition. (u)			
7. For removal of goods or animals seized to a place of safe keeping where necessary one sum of 6d. per statute mile of actual distance of removal.			
(Only one such removal to be allowed for.)			
8. For each man properly and necessarily left in possession of goods while under seizure under any writ or process—			
If boarded, per diem	0	3	6
If not boarded, per diem	0	5	0
(Not more than 2 men to be allowed for in any case.)			
9. For the sustenance and keep of cattle or other animals while under seizure under any writ or process the expenses reasonably and necessarily incurred.			
10. For every sale by auction of chattels moveable under any writ or process (to cover all expenses of sale including auctioneer's fees and advertisements and no fees to be charged to purchasers)—			
Where the property sold does not produce more than £50 five per cent. on the price paid by the purchaser.			
Where the property sold produces more than £50 five per cent. on the first £50 of the price paid by the purchaser two and one half per cent. on the excess of that price over £50.			
11. For every sale by auction of chattels real under any writ or process (to cover all expenses of sale including auctioneer's fees and advertisements and no fees to be charged to the purchasers)—			
Where the property sold does not produce more than £50	1	0	0
Where it produces more than £50 and no more than £100	1	10	0
" " 100 " " 300		2	2
" " 300 " " 		3	3

(z) Where the sheriff fails to arrest and returns *non est inventus* he is not entitled to the bailiff's fee and mileage given by this schedule for executing the warrant. *Ib.*

(a) Where the writ is not actually executed this fee and mileage is not payable: *Gibbon v. Buckley*, 24 L. R. Ir. 423;

Wren v. Stokes, *ubi sup.* But where it is executed it is so payable in addition to the £2 6s. 2d., *sup.*, less the fee of 2s. 6d. paid under item 1. *Ib.* "Executed" in these cases means actual seizure: *Ryan v. Richardson*, 25 L. L. T. 24; *Pirie v. Stewart*, *inf.*

£ s. d.

12. In every case where expenses have been properly incurred by a sheriff for the purpose of executing a writ or process if the same should be settled or shall be withdrawn by reason of the intervention of a Court of Bankruptcy in Ireland or should for some reason other than default on the part of the sheriff or his officers be withdrawn by the person or persons at whose instance the sheriff was required to execute the same the sheriff shall be entitled to the expenses so properly incurred by him to be paid by such person or persons (not exceeding what is provided therefor by this part of this appendix) and if more than one in equal shares. (b)
13. In every case where the execution of a writ for possession of land for non-payment of rent is stayed by payment of the rent and costs after delivery of such writ to the sheriff but before execution executed the sheriff shall be entitled to the expenses properly incurred by him for the purpose of executing such writ under the foregoing provisions of this part of this appendix and such expenses shall be added to and be deemed part of the said costs.

The fees to the Admiralty Marshal are fixed by the order of 28 Nov., 1894.

	Lower scale. s. d.	Higher scale. £ s. d.
On the execution of a warrant	10 0	1 0 0
„ „ of an attachment for every person attached	10 0	1 0 0
„ „ of any decree order commission or other instrument under O. XXII. P.R. O. LXVII. G. Admiralty	10 0	1 0 0
On attending appointing and swearing appraisers	10 0	1 0 0
On delivery of a ship or goods to a purchaser agreeable to the inventory	10 0	1 0 0
On attending the delivery of cargo or sale or removal of a ship or goods per day	10 0	1 0 0
On retaining possession of ship with or without cargo or of a ship's cargo without ship per day	1 0	0 1 0
On the sale of any vessel or goods sold under a decree or order of the Court if under £50	2 6	0 2 6
exceeding £50 not exceeding £100	10 0	0 10 0
for every additional £50 or part thereof	10 0	0 10 0
For signing settling or approving an advertisement	2 6	0 5 0

If the marshal is required to go to a greater distance than 5 miles from his office to perform any of the above duties he shall be entitled to such reasonable expenses for travelling board and maintenance in addition to the above fees as the judge shall order.

The marshal's substitute shall be entitled in addition to such reasonable expenses in the performance of his duties as the judge shall order to the following fees:—

For the execution of a warrant or commission £2 2s.

Ditto for release of ship and cargo or either of them £1 1s.

and to such further remuneration (if any) as the Judge under special circumstances shall certify in his opinion to be reasonable.

(b) See *Kirk v. Purchase*, 32 L. R. Ir. 359.

Ship-keepers

If the marshal or his substitute employ ship-keepers he or they shall be entitled to charge a sum not exceeding 5s. per day or night for each ship-keeper so employed.

The fees in Bankruptcy are fixed by the order of 20 Dec., 1872.

Messengers.—First-class railway fare; actual expenditure on car hire or conveyance; 15s. a day for subsistence.

Assistant messengers.—Second-class fare; the same for car hire, etc.: 10s. a day for subsistence and 10s. a day for time.

Man employed by them where necessary: 5s. a day or if left in charge as watchman 2s. 6d. a day.

Persons employed by official assignees to hold possession:—

In Dublin: 5s. to 7s. 6d. a day according to circumstances—if taking stock 10s. a day.

If employed in the country 10s. a day with travelling expenses second class. In special cases higher charges may be allowed by the registrar.

Local

Messengers.—Second-class fare; 5s. a day subsistence; 15s. a day for time.

Assistant (when executing a warrant)—5s. a day for subsistence; 10s. a day for time.

Special allowances may be made in case of travelling at night.

In Belfast and Cork, persons employed. Same as Dublin.

In other respects the fees are same as above.

There are no special fees in company-winding-up.

Proceeding against the sheriff for contempt does not preclude the plaintiff from bringing his action. (c)

Fees payable
by creditor.

Fees are payable by the creditor, (d) and whether the process be regular or irregular does not matter, (e) and in the absence of a special contract are payable to the sheriff only, and not to his officer. (f)

Levy therefor.

As to levy for fees and poundage it is doubtful whether this extends to *elegit*. (g) It is probably confined to the charges. (h)

Excessive
claim not
always extor-
tion.

Fees charge-
able.

Where the sheriff claims more than he is entitled to, it is not necessarily extortion. (i) Where he makes a seizure in one place and subsequently has another writ delivered to him, he is not entitled to charge a fee or mileage for a second seizure under the second writ unless there is in fact a fresh seizure in a different place. (k) But where he incurs expense at the instance and for the benefit of the creditor, he may deduct this from the amount

(c) *Pilkington v. Cooke*, 16 M. & W. 455.
615.

(d) *Wat.*, p. 112.

(e) *Bullen v. Ansley*, 6 Esp. 111.

(f) *Smith v. Broadbent*, 1892, 1 Q. B. 551; see *Furrelly v. Lynch*, 1897, 2 I. R.

(g) *Mahon v. Miles*, 30 W. R. 123.

(h) *Porter v. Wotton*, 28 Sol. J. 548.

(i) *Long v. Bray*, 10 W. R. 841. See

Stephens v. Rothwell, 6 Moo. 338.

(k) *Re Wells*, 68 L. T. 231.

of the levy. (*l*) Where, after seizure, he withdraws from possession at the instance of the creditor, he is entitled to the bailiff's fee for executing the warrant and expenses while in possession. (*m*)

The sheriff is entitled to deduct poundage though the parties compromise before he sells, (*n*) and when the execution has been set aside for irregularity after the levy and payment over of the proceeds have been made. (*o*) But where he leaves goods taken in execution with a person who parts with the possession of them, he may not retake them merely to secure his own poundage where the execution was fraudulent. (*p*) When he has seized and is in possession of the goods or lands, he is entitled to the poundage. (*q*) But the seizure must be actual and according to the writ. (*r*) It is not necessary that he should proceed to a sale. (*s*) But a tender before seizure is equivalent to payment, and no poundage is payable in such cases, (*t*) nor where after seizure and before sale the writ is set aside, (*u*) or there are concurrent writs and one is satisfied. (*x*)

Compromise.
Execution set
aside.

Sale.

When bankruptcy supervenes after seizure and before sale no poundage is due as costs of the execution, (*y*) nor are such costs expenses incurred while in possession for cutting, carrying, threshing and dressing corn. (*z*) Costs are chargeable only up to the time of notice of the receiving order. (*a*)

Bankruptcy.

The sheriff is not entitled to the costs of preparing a sale which has been stayed by notice of a prior act of bankruptcy. (*b*) But otherwise he is so entitled; (*c*) and in determining the amount for which execution is levied, possession-money may be taken into account even after an injunction has been granted restraining the sheriff from sale. (*d*)

Where, by reason of a winding-up order, the sheriff was ordered to deliver up money and goods seized by him, the liquidator was directed to pay the amounts due to the sheriff for

Winding-up.

(*l*) *Rooney v. Farrell*, 1 R. 5 C. L. 377.

(*m*) *Pirie v. Stewart*, 1897, 2 I. R. 546. As to interpleader, see *Malone v. Ross*, 1900, 2 I. R. 586, where the sheriff was held entitled to all costs of the interpleader order, and also all proper expenses of agisting live stock between the time of seizure and sale, but not to his fees for executing the writ.

(*n*) *Alchin v. Wells*, 5 T. R. 470.

(*o*) *Rawstorne v. Wilkinson*, 4 M. & S. 258.

(*p*) *Goode v. Langley*, 7 B. & C. 26.

(*q*) *Mortimore v. Cragg*, 3 C. P. D. 216.

(*r*) *Bisicks v. Bath Colliery Company*, 3 Ex. D. 174.

(*s*) *Mortimore v. Cragg*, *ubi sup.*

(*t*) *Colls v. Coates*, 11 A. & E. 826.

(*u*) *Miles v. Harris*, 12 C. B. N. S. 550.

(*x*) *Lee v. Dangar*, *ubi sup.*

(*y*) 53 & 54 Vict. c. 71, s. 11; *In re Ludmore*, 13 Q. B. D. 415; and see *In re Levy*, 63 L. T. 291; *In re Thomas*, 1899, 1 Q. B. 460. *Re Priestly*, 23 L. R. Ir. 536.

(*z*) *Ex parte Conder*, 20 Q. B. D. 40.

(*a*) *In re Harrison*, 1893, 2 Q. B. 111; see *Kirk v. Purchase*, 32 L. R. Ir. 359.

(*b*) *Searle v. Blaise*, 14 C. B. N. S. 856.

(*c*) *In re Craycraft*, 8 C. D. 596. See *In re McCarthy*, 7 L. R. Ir. 473.

(*d*) *Ex parte Lithgow*, 10 C. D. 169.

levy and charges on the writs and the costs of his application for such an order. (e)

Keeping possession.

He will be allowed his costs of keeping possession after applying to the Court, where it is for the benefit of the parties, though it be not in furtherance of his duty. (f) As against the trustee in bankruptcy, however, he will only be allowed such costs for twenty-one days. (g) But where he retained out of the proceeds of a sale, which were not sufficient to satisfy the plaintiff's claim, the expenses occasioned by keeping possession under an injunction, this was disallowed, (h) and so was a claim for an unreasonable time. (i) If he levies and remains in possession of goods, other than those of the execution debtor without any special order from the execution creditor, he cannot recover such possession-money. (k) But if, after taking possession of the goods of a company which afterwards goes into liquidation, he is restrained from selling, he is entitled to his poundage and costs. (l) And all incidental expenses may be charged where the sale takes place by order of the Court, even though it subsequently appear that the seizure was wrongful. (m) Where after seizure and before sale the execution creditor becomes disentitled to recover the debt, the sheriff cannot sell any portion of the goods in order to realize the amount of his possession-money, fees and expenses. (n)

Payment into exchequer.

Where a bailiff illegally compelled the plaintiff under a threat of distraining his goods to pay him a sum of money, it was held that the fact of the bailiff's having before the commencement of the action paid over the entire sum to the sheriff, who had paid it into the Exchequer, was no defence. (o)

Remedy by action infrequent.

The remedy by action in consequence of the smallness of the sums in dispute is not often resorted to. (p)

High bailiff.

As to the high bailiff, it is laid down that if any bailiff or officer of the County Court acting under colour or pretence of the process of the said Court, shall be charged with extortion or

(e) *In re Opera, Limited*, 1891, 2 Ch. 154; but see 3 Ch. 260.

(f) *Underden v. Burgess*, 4 Dowl. 104. See *In re Hurley*, 41 W. R. 653; *In re Beeston*, 1899, 1 Q. B. 626, and as to interpleader, *Brady v. Williams*, 1898, 2 L. R. 703, where it was held that the judge in *I.* had a discretion to allow as against the execution creditor the sheriff's expenses up to the time of the admission of the claimant's title to the goods seized.

(g) *Re English v. Ayling*, 1903, 1 K. B. 680.

(h) *Buckle v. Beves*, 5 D. & R. 495.

(i) *In re Finch*, 65 L. T. 466.

(k) *Newman v. Merriman*, 26 L. T. 397; *Royle v. Busby*, 6 Q. B. D. 171.

(l) *In re Perkins Beach Lead Mine*, W. N., 1877, 261.

(m) *Bland v. Delano*, 6 Dowl. 293.

(n) *Sneary v. Abdy*, 1 Ex. D. 299.

(o) *Snowdon v. Davis*, 1 Taunt. 359.

(p) *Longdill v. Jones*, 1 Stark. 345; *Pilkington v. Cooke*, *ubi sup.*; and see *ante*, p. 644; and *post*, p. 702.

misconduct, or with not duly paying or accounting for any money levied by him, the judge may inquire summarily and make such order as he thinks just. (*q*) This section does not apply to an error of judgment." (*r*)

The poundage is 6*d.* in the pound for appraisement, and 1*s.* Poundage. in the pound on the proceeds of the sale. (*s*)

Where the landlord claims for rent due and the distraint therefor and the execution are separate proceedings, poundage is due on each. (*t*)

The following are the fees allowed :—(*u*)

	General	Fees.		
		£	s.	d.
34. For every default summons to be served by a bailiff		0	1	0
And where there are more defendants than one, for each defendant to be served by a bailiff				
		0	1	0
35. For keeping possession of goods till sale on any process of execution, per day (including expenses of removal, storage of goods, and all other expenses), not exceeding seven days, sixpence in the pound on the value of the goods seized, to be fixed by appraisement in case of dispute, (<i>x</i>) so that the total fee does not exceed 10 <i>s.</i> per day; and, in addition, for feeding animals, the actual cost thereof.				
36. Where possession is kept after the seventh day, at the written request of both parties, the fees and cost allowed under the preceding paragraph may be allowed for a reasonable further time in respect of such possession against the debtor or his estate.				
37. For keeping possession of goods in an interpleader proceeding or where notice of a claim to or in respect of any goods or chattels taken in execution is sent to an execution creditor under Order XXVII. Rule 1 (<i>y</i>) after the seventh day, and for taking charge of and feeding animals, in addition to the possession fees and cost as above on execution of warrant, costs out of pocket to be allowed by the judge.				
38. For keeping possession of goods in an interpleader proceeding transferred from the High Court under Order XXXIII., Rules 10 <i>aa</i> and 11 <i>b</i> , such reasonable charges, not exceeding those which might be made by the sheriff, as the judge may order; and for appraisement (if required) and sale, the same charges as are allowed on a sale under an execution issued by a County Court.				
39. For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act 1883, in addition to the fees allowed to the broker by section 154 of the Act, the sum actually and necessarily paid.				
40. When no sale takes place by reason of an execution being				

(*q*) 51 & 52 Vict. c. 43, s. 50. S., 1 Vict. c. 41, s. 32, small debts. Otherwise, see A. S. 6, 3, 1853. I., 27 & 28 Vict. c. 99, s. 18.

(*r*) *Moore v. Brompton*, 69 L. T. 140.

(*s*) Sect. 154.

(*t*) *Re Broster*, 76 L. T. 692. See *Re Morgan*, 1904, 1 K. B. 68.

(*u*) Treasury Order, Feb. 1901.

(*x*) The judge may allow this where the execution is non-effective, by reason of not being upon goods of the execution debtor: *Thomas v. Peek*, 20 Q. B. D. 727.

(*y*) Order 22, Oct. 1907. The fees cannot be claimed after deposit by the claimant under s. 156: *Newsam v. James*, 1909, 2 K. B. 384.

withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting and preparing for sale, not exceeding 1s. in the pound on the value of the goods seized, if such value does not exceed ten pounds, and 8d. in the pound on any excess above ten pounds, the value to be fixed by appraisement in case of dispute, and, in addition, any sum actually and necessarily paid for advertising under the last preceding paragraph.

41. For service of every judgment summons issued on a judgment or order of a court other than a County Court, or on an award, memorandum, or certificate under the Workmen's Compensation Act 1906 or the Workmen's Compensation Rules 1907, a fee equal to that charged under Schedule (A.) on the issue of a judgment summons for the like amount on a judgment or order of a County Court, *so that the total fee does not exceed 5s.*
42. For executing every warrant, order of commitment, precept, or writ issued from or on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Act 1906 or the Workmen's Compensation Rules 1907, 1s. in the pound on the amount for which it issues, if such amount does not exceed ten pounds, and 8d. in the pound on any excess above ten pounds, *so that the total fee does not exceed 16s. 8d.*; and for keeping possession, appraisement, advertising, and sale, or for inventory, appraisement, cataloguing, lotting, and preparing for sale, and advertising where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant of execution on a judgment or order of a County Court.
- 42a. Where the high bailiff is directed to detain a ship under the Workmen's Compensation Act 1906 or the Shipowners' Negligence (Remedies) Act 1905 the same fees for execution of the order for detention and keeping possession of the vessel as for executing a warrant of arrest and keeping possession of a vessel in an Admiralty action where the amount claimed exceeds £100 being part of the costs charges and expenses attending the custody of the ship, Rule (37) (8).
- 42b. On any proceeding under the Workmen's Compensation Act 1906 and the Workmen's Compensation Rules 1907 not herein specified (not being a proceeding by or against a workman prior to the award) for which if such proceeding were taken in an action a fee would be payable the fee which would be payable if such proceeding were taken in an action. (z)
43. For executing any order for the detention, preservation, or interim custody, or for taking possession of any property or thing under Order II., Rules 35 to 37, or Order XII., Rules 1 to 3, or Order XXVII., Rule 12a, the same fees as for keeping possession of goods on a process of execution, not exceeding seven days, and after the seventh day costs out of pocket to be allowed by the judge; and for appraisement (if required), advertising, and sale, the same allowances as on a warrant of execution on a judgment of the court.
44. For delivering the goods on completion of a replevin bond . . . 1 1 0
Together with 6d. a mile from the court house to the place where the goods are.

(z) Treasury Order, 30, May, 1907; and see W. N. 1908, p. 53.

	£ s. d.		
45. For service (including proof of service) of any notice under Order XXV., Rule 40b or 41a, or any order authorizing the issue of a warrant of attachment	0	2	6
46. For executing any warrant of attachment	0	10	0
47. For affidavit of service of an order for the recovery or for the delivery of the possession of land and of disobedience thereto, Order XXV., Rule 49	0	2	6
Fees in Equitable Actions or matters only unless otherwise mentioned	{ Where the subject-matter of the action or matter Does not Exceeds exceed £100 £100		
29. For service within home district of every summons, petition, subpoena, notice, or order, not being a summons for commitment or a summons to a juror—			
If within one mile of court house	2	6	0 4 0
If beyond one mile, then for every additional mile or part of a mile	0	6	0 0 6
30. For service of every summons, petition, subpoena, notice, or order (except as aforesaid), in a foreign district, each person to be served	4	0	0 5 0
31. Where service is ordered to be personal, then an additional fee of	2	6	0 2 6
32. For the execution of each warrant within home district	7	6	0 10 0
With an allowance of mileage, double the amount of the allowance on summonses.			
33. For the execution of each warrant in a foreign district	10	0	0 15 0
34. For keeping possession under a warrant of execution, advertising, appraisement, and sale, or for inventory, appraisement, cataloguing, lotting, and preparing for sale, and advertising, where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant issued by the court in the exercise of its ordinary jurisdiction.			
35. Superintending sale, whether by auction or private contract, under Order II., Rule 35, or Order XXIII., Rule 13, making out account, and paying money into court, £2 per cent. on first £50 so paid, and £1 per cent. on all afterwards.			

Where the amount or value of the subject-matter of the action or matter is not disclosed by the plaint or petition, it shall be taken not to exceed £100, and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed £100, the difference between the fees up to that time taken and those that would have been taken had it exceeded £100 may then be taken.

Fees in Admiralty actions	{ Where the amount claimed Does not Exceeds exceed £100 £100		
	£ s. d. £ s. d.		
34. For service of every summons, subpoena, or notice	0	2	6
And reasonable expenses for travelling and maintenance.			0 4 0
35. Where service is ordered to be personal, then an additional fee of	0	2	6
36. Attendance at special court, if required by judge	0	7	6
			0 15 0

Fees in Admiralty actions	{ Where the amount claimed	
	Does not exceed £100	Exceeds £100
	£ s. d.	£ s. d.
37. For execution of warrant of arrest of vessel or property. And reasonable expenses for travelling and maintenance.	0 15 0	1 0 0
38. For keeping possession of vessel or property under warrant of arrest, to include the cost of a vessel-keeper, if required, per day	0 5 0	0 5 0
39. For service of summons for commitment	0 4 0	0 8 0
40. For execution of order of commitment	1 0 0	1 10 0
41. For execution of warrant of execution against goods in action <i>in personam</i> , or against the goods of parties giving bail and their sureties in action <i>in rem</i> [Form 331A]	1 0 0	1 10 0
42. And for keeping possession, appraisalment, advertising, and sale, or for inventory, appraisalment, cataloguing, lotting and preparing for sale, and advertising, where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant of execution on a judgment of the court given in the exercise of its ordinary jurisdiction.		
43. For execution of warrant of execution against vessel or property in action <i>in rem</i> [Form 331K] [Less, where vessel or property is already under arrest, the fee for execution of warrant of arrest;] And reasonable expenses for travelling and maintenance.	1 0 0	1 10 0
44. For keeping possession of vessel or property under such warrant, to include the cost of a vessel keeper, if required, per day	0 5 0	0 5 0
45. On sale of vessel or property [in addition to appraiser's and auctioneer's charges] for every £50 or fraction thereof of the gross proceeds of sale	0 10 0	0 10 0
46. Appraiser's and auctioneer's fees in action <i>in rem</i> : (a.) For inventory and appraisalment only, without sale : If the appraised value does not exceed £500, for every £100 or fraction of £100 If the appraised value exceeds £500, for the first £500, per cent. For each subsequent £100 or fraction of £100	1 0 0 1 0 0 0 10 0	1 0 0 1 0 0 0 10 0
(b.) Where sale takes place— For inventory and appraisalment, for every £100 of the appraised value, or fraction of £100 For sale, for every £100 or fraction of £100 of the gross proceeds of sale Together with the actual cost of printing, advertising, and hire of sale room.	0 10 0 1 0 0	0 10 0 1 0 0
And, in either case, a reasonable sum for travelling expenses and maintenance.		
(c.) Where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, there may be allowed the full fees under (a.) for inventory and appraisalment [if actually made] and all charges actually and necessarily incurred for printing, advertising, and preparing for sale, and for travelling expenses and maintenance as aforesaid.		

N.B.—The fees in Admiralty actions shall be payable in actions under the County Courts Admiralty Jurisdiction Acts 1868 and 1869 and in proceedings which under the Merchant Shipping Act 1894 or any other Act of Parliament may be taken as Admiralty proceedings in any court having Admiralty jurisdiction by virtue of the said County Courts Admiralty Jurisdiction Acts 1868 and 1869.

Where the amount or value of the subject-matter of the action is not disclosed by the plaint, it shall be taken not to exceed £100, and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed £100, the difference between the fees up to that time taken and those that would have been taken had it exceeded £100 may then be taken.

Fees in other Proceedings

5. In proceedings under the Companies Act, 1867, section 11, the Companies (Memorandum of Association) Act 1890, or the Companies Act 1898, . . . the high bailiff shall be allowed the same fees for the duties performed by him as in proceedings under the Companies (Winding-up) Act 1890.

For taxation of accounts and examination of claims under sections 4 and 5 of the Parliamentary Elections (Returning Officers) Act 1875, or any Act applying the said Act, or any other Act providing for the taxation by the court of costs of elections:—

9. For service of every notice under Order XXXVIII.B., Rules 2 and 4—

	£	s.	d.
Within one mile of registrar's office		0	2 6
Beyond one mile, for every additional mile or part of a mile		0	0 6

The fees to sheriff officers in Scotland are fixed by A. S., Oct. 15, 1908.

£ s. d.

1. *Citations and Attendances.*

- | | | | |
|---|---|---|---|
| (1) Serving petition, complaint, minute, interlocutor, warrant or intimation, charging on decree or extract registered protest, or using arrestment, or citing for examination, for each of these several acts, including the return of execution | 0 | 2 | 6 |
| (2) Executing against more than one person on the same warrant when a separate execution not necessary, each copy after the first | 0 | 1 | 0 |
| (3) Citing a witness for ordinary court | 0 | 1 | 6 |
| (4) Citing every other witness after the first, when only one execution necessary | 0 | 1 | 0 |
| The above to include short copies of citation and returning executions. | | | |

- | | | | |
|--|---|---|---|
| (5) Attending the proof or examination of parties or witnesses—officer, for first hour | 0 | 2 | 6 |
| (6) For each hour or part of an hour thereafter | 0 | 1 | 6 |
| (7) Concurrents attending in like manner, for first hour, each | 0 | 1 | 6 |
| (8) For each other hour or part of an hour thereafter | 0 | 1 | 0 |

2. *Briefs.*

- | | | | |
|--|---|---|---|
| (1) Publishing a brief of service | 0 | 5 | 0 |
| (2) Attendance, first hour—officer | 0 | 2 | 6 |
| (3) Witness | 0 | 1 | 6 |
| (4) For each other hour or part of an hour thereafter, for officer and witness | 0 | 2 | 6 |

3. *Poundings.*

- | | | | |
|---|---|---|---|
| (1) When the appraised value on an ordinary court decree or extract registered protest does not exceed £5 | 0 | 5 | 0 |
|---|---|---|---|

	£	s.	d.
(2) Exceeds £5, but does not exceed £10	0	7	6
(3) Exceeds £10, but does not exceed £20	0	12	6
(4) Exceeds £20, but does not exceed £35	0	15	0
(5) Exceeds £35, but does not exceed £50	0	17	6
(6) Exceeds £50, but does not exceed £100	1	5	0
(7) Exceeds £100, then in proportional amounts as above for each additional £100 or part thereof, but in no case the charge to exceed £2.			
(8) Framing and extending schedule and also execution, for each sheet of 250 words or part thereof	0	1	0
4. <i>Sequestrations for rent and poindings of the ground.</i>			
(1) Inventorying sequestrated effects, or moveables on a writ of poinding of the ground, and executing warrant to open when necessary, when the sum to be secured does not exceed £20	0	10	0
(2) Exceeds £20, but does not exceed £50	0	15	0
(3) Exceeds £50, but does not exceed £100	1	5	0
(4) Exceeds £100, then in proportional amounts as above for each additional £100 or part thereof, but in no case the charge to exceed £2.			
(5) Extending inventory and execution, each per sheet	0	1	0
5. <i>Ejections.</i>			
(1) Ordinary—same fees as in sequestrations.			
(2) Summary—(a) Serving complaint	0	2	6
(3) (b) Ejecting each defender	0	5	0
6. <i>Travelling, detention, outlays, etc.</i>			
(1) For each mile or part of a mile from the court-house where warrant granted to the place of execution—officer	0	0	8
(2) Witnesses and appraisers, each	0	0	6
(3) For each hour or part of an hour after the first two that officer and witness or assistant are detained at a poinding, sequestration, or ejection, but not to exceed in all 15s. per day of eight hours	0	2	6
(4) Attending sale of sequestrated or poinded effects as judge of roup	0	12	6
(5) For each hour or part of an hour after the first two	0	2	6
(6) Add outlays for locksmiths, etc.			
7. <i>Small Debt Cases.</i>			
(1) Serving summons, sist, or counterclaim	0	1	6
(2) Citing one witness	0	1	0
(3) Every other witness after the first	0	0	9
(4) Postage in addition.			
(5) Charge or arrestment	0	1	6
(6) Post copies under (1) and (5) when necessary, each	0	1	0
(7) Postage in addition.			
(8) Poinding or sequestration	0	3	6
(9) Sale	0	3	6
(10) Detention at a sale, waiting for furniture, etc., being removed, and seeing house properly secured, for every hour after the first two, officer and witnesses, but not to exceed in all 15s. per day of eight hours	0	2	6
(11) Any necessary outlays.			
(12) Carrying back, same fees as in (8) to (11).			
(13) Executing warrant to open	0	1	6
(14) In addition to locksmith's fees.			
(15) Detention, fees as in (10).			
(16) Granting certificate of dispenishment	0	1	0
(17) Enrolling for warrant to eject and re-let and intimating diet to defender	0	2	0
(18) Each extra copy	0	1	0
(19) Travelling, each mile or part thereof from court house—officer	0	0	8
(20) Each assistant	0	0	6
(21) Arresting vessel	0	10	6
(22) Travelling, as in (19) and (20).			
8. <i>Arresting vessel.</i>			
(1) Arresting vessel on ordinary court warrant	1	1	0
(2) Travelling, as in 7 (19) and (20).			

	£	s.	d.
(3) Detention, for each hour or part thereof after the first two . . .	0	2	6
(4) Dismantling vessel . . .	1	11	6
(5) With travelling and detention as above, and outlays for skilled artizans and boat hire.			

9. *Apprehensions.*

(1) Executing warrant to apprehend and lodging in prison . . .	1	1	0
(2) Detention, for each hour or part thereof after first two . . .	0	2	6
(3) Outlays, eab or other fare when necessary, and maintenance.			
(4) Taking prisoner from prison to court house for examination . . .	0	10	6
(5) While prisoner in eustody, for each hour or part thereof after first two . . .	0	2	6
(6) Travelling per mile or part thereof, officer and concurrent . . .	0	2	6

GENERAL REGULATIONS.

- (1) When the officer has to cross a ferry he will be allowed the necessary cost of the ferry, and, for mileage, to charge the breadth of the ferry and one half more.
- (2) Where the officer can more expeditiously reach his destination by railway or other public conveyance, he will only be allowed, for himself and assistant or witnesses, for time occupied after the first two hours, including time of travelling:—
 - (1) Where within a radius of 5 miles from his place of business, per hour 0 3 6
 - (2) Where beyond such radius, per hour 0 5 0
 besides necessary outlays.
- (3) In no case shall any officer be entitled (unless under special contract) to charge more than would be allowed to the officer nearest to the court house from which the warrant or authority upon which he acts is issued.

In Ireland the Sheriff's fees in the County Court are fixed by 27 & 28 Vict. c. 99, Sch. B.

For executing any decree, dismiss renewal, or order (except decrees or renewals in ejectment cases or writs or orders of restitution as to lands.

1s. in the £ (or for any fractional part of the first £) on the amount stated in the entry at foot of the decree, dismiss, renewal or order if the entire amount shall be levied; or if the entire amount shall not be levied then on the amount actually levied, and so in proportion for any fractional part of a £ after the first £; 1s. to be paid in every case of a levy, though the amount produced may not be £1.

In all cases for executing any decree, dismiss, renewal or order by arrest of the party, 10s.

To be paid to the sheriff on the delivery of the decree by the persons desiring to execute the same by arrest of the party, and also 6d. per statute mile for the conveyance of the party if arrested from the place of his arrest to the county gaol, to be chargeable to and recoverable from the person demanding such execution by arrest.

For executing any decree or renewal in ejectment or writ or order of restitution of lands not exceeding £5 annual valuation and where the personal attendance of the sheriff is not required 10s.

And where the personal attendance of the sheriff shall be required or where the lands

And where the personal attendance of the sheriff shall be required by the party executing the decree, 6d. additional shall be paid to the

exceed £5 annual valuation . . . sheriff for every statute mile he shall necessarily travel on going to such lands, such mileage not to be charged against the opposite party.

To keepers (not exceeding two in number) of goods seized under any decree or dismissal per day (not exceeding five days) 2s. 6d.

ACTIONS MAY BE TRANSFERRED. Actions by or against county court officers may at the request of the party other than the officer be transferred to an adjoining court for trial. (a)

OVERSEERS. As to overseers and tax-collectors it is enacted that distresses for small rents (b) under £20 are not to be charged for other than as follows :—

	£	s.	d.
Levying distresses	0	3	0
Man in possession, per day (c)	0	2	6
Appraisement, whether by one broker or more, 6d. in the pound on value of goods; stamp, the lawful amount thereof, all expenses of advertisements (if any)	0	10	0
Catalogues, sale and commission, and delivery of goods, 1s. in the pound on the net produce of the sale.			

Aggrieved parties may apply to a justice, who may adjudge treble the amount unlawfully taken, and costs. (d)

ACTION TO RECOVER MONEYS. But, besides these special proceedings, an action lies generally against officers to recover moneys improperly paid to them. (e) The plaintiff, by bringing his action for money had and received can only recover the money so paid. But if trespass had been brought, the defendant must have pleaded specially, and the plaintiff might have recovered damages far beyond the money actually so paid. So where goods are taken in execution which are not the property of the persons against whom execution is taken out, the owner may waive the trespass and bring his action for the amount for which the goods were sold. (f) But in interpleader the action will not lie unless there be an order to pay over on declaring the ownership. (g)

Where an officer obtains money from a person by means

(a) 51 & 52 Vict. c. 43, ss. 42, 43. See *Partridge v. Ethington*, L. R. 6 Q. B. 82.

(b) 57 Geo. III. c. 93, s. 1. Extended to rates and taxes by 7 & 8 Geo. IV. c. 17. Not impliedly repealed as to rates by 12 & 13 Vict. c. 14, s. 1, which gives the justices power to order that the levy shall include "the reasonable charges of taking keeping and selling the said distress." *Coster v. Headland*, 1906, A. C. 286.

(c) The possession must be actual in the absence of agreement: *Lumsden v. Burnett*, 1898, 2 Q. B. 177. It need not

be upon the premises where the seizure took place. *Scott v. Denton*, 1907, 1 K. B. 456.

(d) See *Nott v. Bound*, L. R. 1 Q. B. 405, and *Robson v. Biggar*, 1908, 1 K. B. 672.

(e) What the Americans call "Tammenny" would appear to be to some extent the natural outcome of excessive legislation.

(f) *Per* Ld. Mansfield; *Feltham v. Terry*, cited 1 T. R. 387.

(g) *Discount Co. v. Lambard*, 1893, 2 Q. B. 329.

of oppression, imposition or deceit, an action will lie for its recovery; (*h*) as, for instance, where a sheriff obtains money under the pressure of an illegal arrest; (*i*) or under a threat to sell goods under a *fi. fa.* which he has no right to sell; (*k*) or receives money in excess of that due; (*l*) or where a toll-collector exacts an illegal or unauthorized toll; (*m*) or where an officer levies money by seizing or selling goods upon a magistrate's conviction, which is afterwards quashed; (*n*) or a revenue officer unlawfully seizes goods as forfeited and unlawfully detains them, and takes money which he has no right to take as the condition of their release. (*o*)

But an action does not apparently lie against a revenue officer to recover an overpayment, (*p*) nor to recover duties received by him under the Act which imposed them is repealed, if he has paid them over to his superior. (*q*) And it was held also not to lie against a highway surveyor for failing to restore an overplus of distress to the owner, if such restoration be not properly demanded. (*r*)

When it does not lie.

If assets in the hands of an officer have been increased by an honest mistake of law, the Court will compel him to recognize the rules of honesty, and to act accordingly. (*s*)

Assets come to officer's hands.

Under certain statutes an action lies for a penalty for taking money under colour of office. (*t*) No damages other than the penalty are recoverable in such an action. (*u*)

Penalty.

Where a sheriff's officer was sued for a penalty for extortion (*x*) which was not proved, but the officer's claim was held outrageous, the action was dismissed, but without costs. (*y*)

False Imprisonment (z)

False imprisonment.

Every confinement of the person is an imprisonment, whether it be in a common prison or in a private house, or even by

- (*h*) *Neate v. Harding*, 6 Ex. 349.
- (*i*) *Payne v. Chapman*, 4 Ad. & E. 364;
- Mesnil v. Dakin*, L. R. 3 Q. B. 18.
- (*k*) *Valpy v. Manley*, 1 C. B. 602.
- (*l*) *Dev v. Parsons*, 2 B. & A. 562; L., 27 & 28 Vict. c. 99, s. 65. See *Murphy v. Sandes*, 10 I. R. C. L. 309; *Kelly v. Browne*, 12 L. R. Ir. 354.
- (*m*) *Lewis v. Hammond*, 2 B. & A. 206.
- Parsons v. Blandy*, Wight. 22; see *Carr v. Fowle*, 1893, 1 Q. B. 251.
- (*n*) *Feltham v. Terry*, *ubi sup.*
- (*o*) *Atlee v. Backhouse*, 3 M. & W. 645;
- Irving v. Wilson*, 4 T. R. 485.
- (*p*) *Whitbread v. Brooksbank*, Cowp. 69; *Lofft*, 529; but see *Geraldes v. Donison*, Holt, N. P. C. 346.

- (*q*) *Greenway v. Hurd*, 4 T. R. 553.
- (*r*) *Charinton v. Johnson*, 14 L. J. Ex. 299.
- (*s*) *In re Opera, Limited* [1891], 2 Ch. 154; but see 3 Ch. 260.
- (*t*) As to this, see *Edwards v. Salmon*, 23 Q. B. D. 531.
- (*u*) *Frederick v. Lookup*, 4 Burr. 2018; *Cuming v. Sibly*, *ib.* 2489.
- (*x*) 50 & 51 Vict. c. 55, s. 29.
- (*y*) *Woolford's Trustee v. Levy*, 1892, 1 Q. B. 772; see *Lee v. Dangar*, *ubi sup.*
- (*z*) The remedy of a person falsely imprisoned is in the first instance, *i.e.* while under arrest to obtain a writ of *habeas corpus*, except in treason or felony: 31 Car II. c. 2, s. 2.

forcibly detaining one in the public streets. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority. (*a*)

False imprisonment commences from the time of arrest, and lasts until the plaintiff is before the magistrates. After that it becomes malicious prosecution. (*b*)

Actual contact is not necessary to constitute an imprisonment. Any restraint put upon the freedom of another by show of authority or force, is sufficient to constitute an imprisonment, (*c*) so that if a person is restrained from leaving a room or going out of a house without the presence of a constable, this infringement of his personal liberty will constitute an imprisonment. (*d*) If you put your hand on a man, or tell him he must go with you, and he goes, supposing you have the right and the power to compel him, that is an arrest. (*e*)

By sheriff.

A person unlawfully imprisoned by a sheriff or any of his officers shall have an action against such sheriff in like manner as against any other person that should imprison him without warrant. (*f*)

[In Scotland damages were given for detaining a party in a public-house on an unsigned warrant granted *in fuga*.] (*g*)

Where the bailiff having a writ of *fi. fa.* in his hands arrested the defendant, instead of levying on his goods, the sheriff was held liable. (*h*) So also was he where he arrested a person who represented himself to be the person named in the writ, for detaining him after he had notice that he was not the real party. (*i*) And he is also liable where he arrests after the return-day of the writ. (*k*) If a bailiff who has a process against

(*a*) 3 Black. 127. S., 1701, c. 6. Proceedings are rarely brought under the Act, but take the form of an action for damages: *Campbell v. Ramsay*, Elch. h. t. 1 M. 17067; *Miller v. Mills*, 9 S. 625. As to arrest in another country, see 11 & 12 Vict. c. 42, s. 15; 14 & 15 Vict. c. 93, s. 30. *Callendar v. Milligan*, 11 D. 1174; *Graham v. Stevenson*, Hume, 250. *Beattie*, Arkley, 14.

(*b*) *Austin v. Dowling*, 5 L. R. C. P. 534.

(*c*) The practice of "shadowing" by the police would appear to fall within these words. And even if the party be suspected of felony about to be committed on which arrest might take place, it seems doubtful whether this practice could be justified. Cases have occurred in which false charges have been made as a cover for this process.

(*d*) *Warner v. Riddiford*, 4 C. B. N. S. 206. The practice of watching premises

would appear to come within these words. As to the employment of plain-clothes police being illegal, see *Southern Bowling Club v. Ross*, ante, p. 517.

(*e*) *Per Tindal, C.J.*, *Wood v. Lane*, 6 C. & P. 774. See *McHattie v. Wyness*, 19 R. 95.

(*f*) 50 & 51 Vict. c. 55, s. 15. I., common law.

(*g*) *Anderson*, 18 F. C. 51. The Procurator-Fiscal may be liable to this action but not the Lord-Advocate. See *Somerville v. Sutherland*, 2 F. 185, where a witness was arrested without warrant in Court on a charge of perjury, and *Macaulay v. North Uist*, 15 R. 99.

(*h*) *Smart v. Hutton*, 8 A. & E. 568.

(*i*) *Dunston v. Paterson*, 2 C. B. N. S. 495.

(*k*) *Parrott v. Mumford*, 2 Esp. 585. See *Dale*, 6 Q. B. D. 376; *Re Sullivan*, 22 L. R. Ir. 98.

any one says to him, "You are my prisoner; I have a writ against you"; on which the person addressed submits, turns back, or goes with him, though the bailiff never touched him; (l) or if a constable command a person to go with him, and the order is obeyed, and they walk together in the direction pointed out by the constable, in each case there is a constructive imprisonment. (m) And in an action against a constable by A, he cannot defend himself under a magistrate's warrant against B, although A was charged with felony before the magistrate, and was the person against whom the warrant was intended to issue; (n) nor if he arrest a person on a charge from another person which is unreasonable. (o) But the forcibly preventing a party from proceeding in a particular direction, *e.g.*, along a public footway, is not an imprisonment. (p) And a constable on duty at a police station is *semble* justified in detaining a person brought there in charge and delivered to him by a constable, although he may have been illegally arrested. (q) By constable.

The keeper of a prison who receives and detains one apprehended and charged in custody under a warrant runs the risk of the warrant having been executed against the proper person, and if by mistake it be executed against authority, he is liable. (r) So also is he if where a duty to discharge is cast upon him, he detain a person longer, (s) and where on an appeal, where the original order is varied, he detains him without a fresh warrant. (t) But where the cause does not appear on the face of the warrant or order and he complies with its terms, he is not liable. (u) Every unlawful detainer of a prisoner after he has gained a right to be discharged is a fresh imprisonment. (x) All persons aiding and assisting in the unlawful confinement of another are responsible in damages for the trespass, although they had nothing to do with the original arrest, and had no knowledge that the By gaoler.

(l) *Grainger v. Hill*, 4 Bing. N. C. 212.

(m) *Bird v. Jones*, 7 Q. B. 742; *Manuel v. Fraser*, 1 Mur. 395; *Hollands v. Richardson*, 6 D. 9; *Malcolm v. Duncan*, 24 R. 747.

(n) *Hoye v. Bush*, 2 Sc. N. R. 86; and see *Crough v. Gamble*, 24 L. R. Ir. 458, and *Pringle*, 5 M. (H. L.) 55.

(o) *Hogg v. Ward*, 3 H. & N. 417. *Henderson*, 11 F. C. 47.

(p) *Bird v. Jones*, *ubi supra*.

(q) *Bowditch v. Fosberry*, 19 L. J. Ex. 339. The general duty of constables on arrest is within a reasonable time to take the party before a justice and of other officers to take to the nearest station-house. If the detention be extended beyond such

time it would give ground for this action. But see *Williams v. Glenister*, 2 B. & C. 699.

(r) *Aaron v. Alexander*, 3 Camp. 34.

(s) *Moon v. Rose*, L. R. 4 Q. B. 486; *Moe v. Cruickshank*, 86 L. T. 708; *Ross v. McBean*, 8 D. 250. Persons charged with the apprehension or custody of prisoners are responsible for their treatment while in their care.

(t) *Demer v. Cook*, 88 L. T. 629.

(u) *Greaves v. Kaeue*, 4 Ex. D. 73; *McCombe v. Gray*, 4 L. R. Ir. 432; *Neil v. Miller*, Elch. Wrong. Imp.

(x) *Withers v. Henley*, Cro. Jac. 379; 2 Inst. 52.

Generally.

arrest and imprisonment were unlawful at the time they had a hand in it. (y) But this does not apply to a constable arresting on a hue and cry, (z) or on a reasonable charge made by another person. (a) If a wrong person be arrested by mistake, all persons causing the arrest are liable for the injury, unless the party complaining has brought the injury on himself by his own misstatements and misrepresentations. (b)

Pleading.

A justification of an imprisonment on the ground that the plaintiff had committed felony, and an abandonment of the plea at the trial, or a failure to prove it, are evidence of malice, and a great aggravation of the original wrong; but a justification on the ground that a felony had been committed, and that the defendant had reasonable and probable cause to suspect the plaintiff guilty of it is rather in the nature of an apology for the defendant's conduct. (c) The onus of justification is on the defendant, and therefore in trespass for arrest on a warrant the plaintiff need not produce the warrant. (d) It lies on the defendant to plead and prove affirmatively the existence of reasonable cause as his justification. (e) A plea which professes to justify several assaults and false imprisonments laid in separate counts, must show distinct occasions upon which the defendant was justified in committing each particular trespass. (f)

The question of reasonable and probable cause is for the judge. (g)

Where, under statutes, constables are authorized to arrest offenders in their view or found committing offences, a plea justifying an arrest must allege that the offence was committed within view of the constable, or the offender was found committing such offence, as the case may be. (h) And where a statute authorized a constable to remove an offender, a plea stating that he was so removed and detained in custody, was held no justification, such detention having been unlawful. (i)

(y) *Griffin v. Coleman*, 4 H. & N. 265; *Strang*, 11 D. 378. See *Hay v. Lister*, 2 Irv. 333; *Wicks v. Clutterbuck*, 10 Moo. 89.

(z) *Ante*, p. 82.

(a) *Ante*, p. 403; *McDonald*, 1 Stuart 129.

(b) *Davies v. Jenkins*, 11 M. & W. 754; *Hamilton v. Anderson*, 5 M. 312; *Walker v. Hunter*, 16 D. 226.

(c) *Warwick v. Foulkes*, 12 M. & W. 509. In S. in case of wrongful detention no averment of malice as required by 43 Geo. III. c. 141, s. 1 is necessary: *Tait v. Payne*, 18 D. 1038; *Miller v. Alexander*, 9 D. 7;

Imrie v. McWhanney, *ib.* 493. But see *Bruce v. Adamson*, 7 S. L. T. 110.

(d) *Holroyd v. Doncaster*, 11 Moo. 440.

(e) *Hicks v. Faulkner*, 8 Q. B. D. 167; *Mure v. Kaye*, 4 Taunt. 34; and see *McCloughan v. Clayton*, Holt, N. P. C. 478.

(f) *McCurday v. Driscoll*, 1 C. & M. 618; *Dawson v. Clark*, cited 1 W. Bl. 563.

(g) *Howard v. Clarke*, 20 Q. B. D. 558; *Young v. Glasgow*, 18 R. 825. See *Hill*, 8 F. 220.

(h) *Simmons v. Millingen*, 2 C. B. 524.

(i) *Williams v. Glenister*, 2 B. & C. 699.

Proof must be given of circumstances from which the judge Evidence. and jury may decide whether there was or was not a restraint or a detention of the person, and it is not enough for witnesses to swear that they considered the plaintiff was in custody, nor to show that the defendant at a police office stood before the plaintiff and said, "You cannot go away till the magistrate comes," if it appears that he relinquished that attitude, and went to another part of the office before the plaintiff had made any attempt to depart. (*k*) Where an imprisonment can only be justified on an original warrant, and the defendant had a copy only, the plaintiff may prove this fact. (*l*)

If A imprisons B, and in continuance of the imprisonment delivers him into the charge of C, who keeps him in custody, the acts and declarations of C are evidence against A. (*m*) If a witness who admits that he stole similar property at the same time is called to sustain the defence, his testimony ought to receive some confirmation. (*n*) The defendant cannot cross-examine as to the bad character of the plaintiff, nor as to previous charges against him. (*o*)

A conviction of a third party for the same offence as that for which plaintiff was arrested cannot be put in, unless the defendant knew of it at the time of the arrest. (*p*) And a conviction which when put in proves to be informal, has no weight. (*q*)

Reasonable and probable cause of suspicion is good evidence in mitigation of damages. (*r*)

Every expense that the plaintiff necessarily incurs in order Damages. to restore himself to a complete state of freedom is recoverable as damages. (*s*) But he cannot recover in respect of having been detained whereby he missed an opportunity of being taken into employment, (*t*) nor on account of a remand by the justice, (*u*) nor for illness caused by refusal of defendant to send for medical assistance, unless the jury find that the detention was unreasonable. (*x*) The Court never interferes with the discretion of the jury, unless the damages are grossly excessive or founded on a mistaken or improper view. (*y*) Where some working men were

(*k*) *Cant v. Parsons*, 6 C. & P. 504.

(*l*) *Howard v. Hudson*, 2 E. & B. 1.

(*m*) *Powell v. Hodgetts*, 2 C. & P. 432.

(*n*) *Richards v. Turner*, Car. & M. 414.

(*o*) *Downing v. Butcher*, 2 M. & Rob. 374; *Mackintosh v. Smith*, 3 Macph. H. L. 6.

(*p*) *Thomas v. Russell*, 9 Ex. 764.

(*q*) *Justice v. Gosling*, 12 C. B. 39.

(*r*) *Perkins v. Vaughan*, 4 M. & G. 988; *Chinn v. Morris*, 2 C. & P. 361. S., 27 &

28 Vict. c. 53, s. 30.

(*s*) *Foxall v. Barnett*, 2 El. & Bl. 928; *Att.-Gen. v. Pearson*, 10 Jur. 651. *Donald v. Robertson*, 2 S. 65; *Gibson v. Anderson*, D. 19.

(*t*) *Hoey v. Felton*, 11 C. B. N. S. 142.

(*u*) *Lock v. Ashton*, 12 Q. B. 871; see *Morgan v. Hughes*, 2 T. R. 231.

(*x*) *O'Brien v. Brabner*, 49 J. P. 227.

(*y*) *Per Tindal, C.J.*; *Edgell v. Francis*, 1 M. & G. 222.

unlawfully imprisoned for six hours, being in the meantime well fed and cared for, and the jury awarded £300 to each, the Court refused to set aside the verdict. (z) And where a person was arrested on a bad warrant for arrears of poor-rate, the damages were held to be the amount he had paid under protest on arrest. (a)

The plaintiff may in his notice of trial, and the defendant may within four days afterwards, or such extended time as may be allowed, claim to have the action tried by a jury. (b)

Jury.

Limitation.

The action must be commenced within four years next after the cause thereof. (c)

Malicious
prosecution.

Malicious Prosecution.

A malicious prosecution is a prosecution whereby the plaintiff is injured by being arrested or put to expense, instituted by one person against another without reasonable and probable cause, and which has failed. It commences at the time the plaintiff is before the magistrates. Prior to this, it is false imprisonment where there has been an arrest. (d) Persons who procure such a prosecution are equally liable with the actual prosecutors. (e)

Prosecuting a person with any other motive than bringing a guilty party to justice is a malicious prosecution, as where it is instituted with the view of terrifying parties from the commission of some prevalent offence. (f)

If there be no reasonable or probable cause for a charge, the action lies, (g) and so also does it for maliciously obtaining or executing a warrant. (h) Where the warrant is illegal malice and want of probable cause do not arise. (i)

(z) *Huckle v. Money*, 2 Wils. 205.

(a) *Clark v. Woods*, 17 L. J. M. C. 189; *Norton v. Monckton*, 43 W. R. 350. As to damages in joint actions, see *Haythorn v. Lawson*, 3 C. & P. 196; *Barratt v. Collins*, 10 Moo. 446. In S. the claim for damages is not barred by resistance to the officer: *O'Neal v. Dumfries*, M. 11201; nor by conviction for deforcement: *Beattie v. M'Lellan*, 8 D. 930.

(b) Order xxxvi., r. 2. 1., r. 4. S., 6 Geo. IV. c. 120, s. 28. 51 & 52 Vict. c. 43, s. 101; 1., 14 & 15 Vict. c. 57, s. 100.

(c) 21 Jac. I. c. 16, s. 3. In S. three years, 1701, c. 6; *M'Christie v. Koa*, 9 S. 312. As to costs, 31 & 32 Vict. c. 100, s. 40. 1., 16 & 17 Vict. c. 113, s. 20.

(d) *Austin v. Dowling*, 5 L. R. C. P. 534.

(e) *Saville v. Roberts*, 1 Ld. Ray. 377.

(f) *Stevens v. Midland Counties Railway*, 10 Ex. 352. A recidivist is the most

probable subject of such a prosecution on account of his defective credibility. Cases are not unknown of prosecution instituted by an officer in order to divert suspicion from himself. Cf. *R. v. Hughes*, 4 Q. B. D. 614.

(g) *Clark v. Postan*, 6 C. & P. 423; *Fitzjohn v. Mackinder*, 9 C. B. N. S. 505; *Kennedy*, 17 R. 1036; *MacLellan*, 11 S. 187; *Arbuckle*, 3 Dow. 160.

(h) *Boot v. Cooper*, 1 T. R. 535; 3 Esp. 135; 4 Doug. 339; *Elseo v. Smith*, 1 D. & R. 97; and see *Hope v. Evered*, 17 Q. B. D. 338; *Utting v. Bernay*, 5 Ti. Rep. 39; and *Creagh v. Gamble*, 24 L. R. 1r. 458. *Evans v. M'Loughlan*, 4 Macq. H. L. 89; *Graham v. M'Lachlan*, 15 D. 889; *Munro v. Taylor*, 7 D. 500; *M'Pherson v. McLennan*, 14 R. 1063.

(i) *Bell*, 3 Macph. 1026.

Counsel's opinion is of no avail to a man who has instituted such a prosecution. (*k*)

On the principle that *nemo bis vexari debet pro eadem causa* it has been held that there can be no appeal from an acquittal. (*l*) Any such proceedings, therefore, would appear to be in the nature of a malicious prosecution. (*m*)

The necessary ingredients in this action are:—

1. Malice, which may be either express or implied. (*n*)

Malice.

To sustain the averment of malice the charge must be wilfully false. (*o*) But if in the opinion of the judge there was no reasonable or probable cause, the jury may from that fact alone infer malice, (*p*) unless the prosecutor honestly believed in the charge. (*q*)

Scandalous charges and accusations made by the defendant against the plaintiff in connection with the prosecution are evidence of malice. And so are any statements or declarations made by the defendant tending to show that he was actuated by spite and ill-will in instituting the prosecution. (*r*)

It is no answer to show that the charge preferred against the plaintiff was not sustainable in point of law. (*s*)

The question of malice is never in terms left to the jury. (*t*)

2. Want of reasonable and probable cause.

Want of
reasonable and
probable cause.

Reasonable and probable cause has been defined by a learned judge as an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the prisoner charged was probably guilty of the crime imputed. (*u*) Information received from persons apparently respectable and believed to be credible is sufficient. (*x*) The disbelief of the party making the charge is some want of probable

(*k*) *Hewlett v. Cruchley*, 5 Taunt. 223.

(*l*) See *The Queen v. London*, JJ., 6 Ti. Rep. 389; *Cox v. Hakes*, ib. 465; 39 W. R. 145; *R. v. Galway*, 1906, 2 I. R. 499.

(*m*) 42 & 43 Vict. c. 49, s. 33; *Foss v. Best*, 1906, 2 K. B. 105.

(*n*) Malice means a wrongful act done intentionally without just cause or excuse, per Bayley, J., in *Bromage v. Prosser*, 4 B. & C. 247. And see the judgment of Ld. Brampton in *Quinn v. Leatham*, 1901, A. C. 524, and *Glamorgan Coal Co. v. S. Wales Federation*, 1903, 2 K. B. 545, and the judgment of Ld. Campbell in

Ferguson v. Kinnoull, 9 Cl. & F. 321.

(*o*) *Cohen v. Morgan*, 6 D. & R. 8.

(*p*) *Busst v. Gibbons*, 30 L. J. Ex. 75. In S. the procurator-fiscal may be liable to this action, but not the Ld. Advocate.

(*q*) *Brown v. Harkes*, 61 L. J. Q. B. 151. See *Buchanan*, 7 F. 1001.

(*r*) *Mitchell v. Williams*, 11 M. & W. 217.

(*s*) *Wicks v. Fentham*, 4 T. R. 248.

(*t*) *Payne v. Revans*, 9 W. R. 693.

(*u*) *Hicks v. Faulkner*, 8 Q. B. D. 167. See *Phillips v. Naylor*, 4 H. & N. 565.

(*x*) *Chatfield v. Comerford*, 4 F. & F. 1008.

cause, notwithstanding other evidence may have shown that there was *prima facie* probable cause. (y) The evidence need not be sufficient to convict, nor need it be confirmed at the time of the plaintiff's arrest. (z) Similarity of handwriting has been held not *per se* reasonable and probable cause for preferring a charge. (a)

The question of reasonable and probable cause is for the judge. (b)

3. Prosecution determined in plaintiff's favour.

Prosecution
determined in
plaintiff's
favour.

The plaintiff to recover in this action must have had judgment in his favour in the prosecution, (c) unless the proceedings were such that he had no opportunity of preventing an unfavourable termination. (d) An acquittal through defect in the prosecution is sufficient, (e) but if it be the result of deliberation, and the evidence be such as to cause the jury to pause, it is doubtful whether it is so. (f) The prosecution being non-prossed is not of itself evidence of malice. (g)

4. Allegation and proof of damage having been sustained by the plaintiff is essential. (h) The plaintiff must in this action allege and prove affirmatively the non-existence of reasonable and probable cause. (i) Every allegation proper to support the action, namely, that the defendant falsely, maliciously, and without any reasonable or probable cause, caused the plaintiff to be indicted, and the trial and acquittal must be pleaded. (k) It is not necessary to state that there was an information, if the defendants procured a warrant to issue; but if the claim state that the defendant made information on oath, on which the magistrate granted the warrant, the information must be proved and a recital of it in the warrant is not sufficient. (l) But the claim is sustained, although it appear that the defendant preferred the indictment unwillingly and solely because he was bound over to do so, if it appear that he was himself the cause of his being

leading.

(y) *Broad v. Ham*, 5 Bing. N. C. 722;
Lister v. Perryman, L. R. 4 H. L. 521.

(z) *Davson v. Vansandau*, 11 W. R. 516.

(a) *Clements v. Ohrlly*, 2 C. & K. 686.

(b) *Howard v. Clarke*, 20 Q. B. D. 558;
Cox v. English, & Co., Bank, 1905, A. C. 168.

(c) *Taylor v. Ford*, 29 L. T. 392; 22 W. R. 47. See *Castrique v. Behrens*, 3 El. & El. 709; and *Barber v. Lesiter*, 7 C. B. N. S. 186.

(d) *Steward v. Gromett*, 7 C. B. N. S. 191; *Barnett v. White*, 11 D. 666.

(e) *Wicks v. Fentham*, 4 T. R. 247. See

Legatt v. Tollervey, 14 East 302.

(f) *Smith v. Macdonald*, 3 Esp. 7. But see *Willans v. Taylor*, 3 Moo. & P. 350.

(g) *Sinclair v. Eldred*, 4 Taunt. 7.

(h) *Freeman v. Arkell*, 3 D. & R. 669;
Cotterell v. Jones, 11 C. B. 713; *Johnson v. Emerson*, L. R. 6 Ex. 329; *Wren v. Weild*, L. R. 4 Q. B. 730.

(i) *Hicks v. Faulkner*, *ubi sup.* *Strachan v. Munro*, 7 D. 399.

(k) *Carnan v. Truman*, 1 Bro. P. C. 101;
De Medina v. Grove, 10 Q. B. 152; *Barclay*, v. 16 D. 714.

(l) *Gregory v. Derby*, 8 C. & P. 749.

bound over by originally making a malicious charge. (*m*) Where the bill has not been found, an action cannot be supported without evidence of express malice as well as the want of probable cause. (*n*)

The plaintiff must give evidence of malice express or implied. Evidence. It cannot be implied from mere proof of the prosecutor not appearing when called. (*o*) Evidence of misconduct of the prosecutor towards the plaintiff is admissible. (*p*)

In an action for maliciously procuring plaintiff to be arrested on a charge of larceny, defendant cannot give evidence to show that the plaintiff's character was suspicious, and that his house had been searched on former occasions. (*q*) If the defendant gives evidence of probable cause, a witness may, however, be asked whether the plaintiff was not a man of notoriously bad character. (*r*) But where the plaintiff does not expressly claim damages in respect of injury to reputation, general evidence as to his character is inadmissible. (*s*)

There are three sorts of damages in these cases, either of Damages. which is sufficient to sustain an action, namely, damage to a man's reputation, person or property. (*t*) And every expense which the plaintiff has necessarily incurred in order to defend himself from the false and malicious charge is recoverable. (*u*)

The right to trial by jury is the same as that in actions for Jury. false imprisonment. (*x*)

The action must be commenced within four years after the Limitation. cause of such action. (*y*)

Public Nuisance

Public
nuisance.

Every injury to public rights which affects all persons alike, such as an obstruction in a public thoroughfare merely impeding the right of passage and rendering the way less convenient, is remediable only by indictment. (*z*) But for any special injury which affects an individual beyond his fellows, (*a*) such as being delayed in making a journey and compelled to take a circuitous

(*m*) *Dubois v. Keats*, 3 P. & D. 306.
(*n*) *Byne v. Moore*, 1 Marsh 12; and
see *Cotton v. Brown*, 3 A. & E. 312.
(*o*) *Purcell v. Macnamara*, 9 East 361;
1 Camp. 199; *Abrath v. North Eastern
Railway Company*, 11 Q. B. D. 440.
(*p*) *Caddy v. Barlow*, 1 M. & Ry. 275.
(*q*) *Newsam v. Carr*, 2 Stark. 69.
(*r*) *Rodriguez v. Tudmire*, 2 Esp. 721.
(*s*) *Downing v. Butcher*, 2 M. & Rob.
(*t*) *Per Holt, C.J., Savile v. Roberts*, 1

Ld. Ray, 378. S., 27 & 28 Vict. c. 53,
s. 30.
(*u*) *Foxall v. Barnett*, 2 El. & Bl. 928.
(*x*) See *ante*, p. 678.
(*y*) 21 Jac. I. c. 16, s. 3. As to costs
S., 31 & 32 Vict. c. 100, s. 40. I., 16 &
17 Vict. c. 113, s. 20.
(*z*) *Hart v. Basset*, T. Jon. 156.
(*a*) *Barber v. Penley*, 1893, 2 Ch. 449
Special damage unnecessary in S.

route, (b) or driving against the obstruction during a dark night, compensation in damages may be obtained. (c) The prevention of customers from going to a colliery by obstructing the highway *per quod*, the benefit of the colliery was lost, and the coals dug up depreciated in value, is such a special and particular damage as to enable the owner of the colliery to maintain an action for the private injury resulting from the nuisance. (d)

Limitation.

The limitation for actions of the first kind is four, and for those of the second kind six years. (e)

Slander.

Slander

Slander is a false and malicious defamation of character, (f) expressed verbally, tending to injure the reputation of another and expose him to public ridicule, hatred or contempt. (g)

The action is not maintainable without proof of actual damage caused to the plaintiff, *except* where the words impute the commission of a crime, unfitness for society, or misconduct in business. (h) And to call a man a felon after he has been convicted but received a pardon or undergone his sentence is actionable, (i) without proof of such damage. Words merely conveying suspicion will not sustain the action, (k) but it is otherwise if they impute a crime, (l) though it is described in vulgar language and not in technical terms, (m) and the offence imputed need not be an indictable offence. (n)

However honestly the party who publishes a libel believes it to be true, if it is untrue in fact, the law implies malice, unless the occasion justifies the act, and this is a question of law. (o) A publication may be a libel on a private person which would not

(b) *Winterbottom v. Derby*, L. R. 2 Ex. 316.

(c) *Iveson v. Moore*, 1 Ld. Ray. 486. See *Harris v. Mobbs*, 3 Ex. D. 268; *Wilkins v. Day*, 12 Q. B. D. 110; *Ogston v. Aberdeen Tram. Co.*, 75 L. T. 633.

(d) *Iceson v. Moore*, *ubi sup.* As to damages, see *Bell v. Midland Ry.*, 10 C. B. N. S. 287. Cf. *Brown v. Murray*, 1 R. 776.

(e) 21 Jac. I. c. 16, s. 3 E.

(f) By s. 56 of the County Courts Act, this action does not lie in that Court. But by s. 64 it may be there taken by agreement. See *Stokes v. Stokes*, 19 Q. B. D. 419. No similar enactment in S. or I.

(g) Broom, Com. Law, 9th ed., 731. In S. the definition is the same but publication is unnecessary.

(h) *Roecliffe v. Edmonds*, 7 M. & W.

12; *Foulger v. Newcomb*, L. R. 2 Ex. 327. See 54 & 55 Vict. c. 51, s. 1, slander of women. In S. damages may be given for wounded feelings: *Bryson v. Inglis*, 6 D. 363. But actions for mere abuse generally fail: *Craig v. Hunter*, 15 F. C. 371; *Mackintosh v. Squair*, 40 J. 561.

(i) *Leyman v. Latimer*, L. R. 3 Ex. D. 352.

(k) *Simmons v. Mitchell*, 6 App. Cas. 156.

(l) The police have on more than one occasion caused libellous advertisements to be published. See *Hopley v. Williams*, 53 J. P. 822.

(m) *Colman v. Godwin*, 3 Doug. 90.

(n) *Webb v. Beavan*, 1 Q. B. D. 609.

(o) *Darby v. Ouseley*, 1 H. & N. 1. *Robertson v. Allardyce*, 5 M. 326; *McTernan v. Bennett*, 1 F. 333; *Lee*, 6 F. 642.

be so on a person in a public capacity, but any imputation of unjust or corrupt motives is equally libellous in either case. (p)

Allegorical terms of a defamatory character or of evil import, such as imputing to a person the qualities of a "frozen snake" in the fable, are libellous *per se* without innuendoes to explain their meaning. (q)

Repetition of injurious rumour is actionable unless the occasion be privileged, and it is no justification that the rumour existed. (r) Where slanderous words are not actionable *per se*, no action will lie against the original utterer for damages resulting from a repetition unauthorized by him, (s) nor where the special damage was due not to the slander as uttered by the defendant, but to its repetition. (t) It is no answer to show that the slander was heard from another, naming the person and the time without showing that the defendant believed it to be true, and spoke the words on a justifiable occasion. (u) If the defendant at the time of speaking the words give the name of the person from whom he heard it, this is no justification; but if he did this, and at the trial proves this fact, it will go in mitigation of damages. (x)

Privileged communications comprehend all statements made *bonâ fide* in the performance of a duty, or with a fair and reasonable purpose of protecting the interests of the person making them. In such cases the onus of proving malice lies on the plaintiff. (y) Charges and communications which would otherwise be slanderous are protected if made *bonâ fide* in the prosecution of an inquiry into a suspected crime. It is for the jury to say whether the circumstances warranted the charge made by the defendant, whether it was made *bonâ fide* or before more persons than was necessary, or in language stronger than the occasion justified. (z) A criminatory communication made by a public officer is privileged if it is confined to a statement of facts which it is his duty to investigate, and contains nothing

(p) *Parmiter v. Coupland*, 6 M. & W. 105; *Aiton v. M'Culloch*, 3 Mur. 291.

(q) *Hoare v. Silverlocke*, 12 Q. B. 625; and see *Jacobs v. Schmaltz*, 62 L. T. 121. *McNeill*, 10 R. 867. *Kinahan v. McCullagh*, 11 I. R. C. L. 1.

(r) *Watkin v. Hall*, L. R. 3 Q. B. 396. *McCulloch v. Litt*, 13 D. 960; *Rose v. Robertson*, Hume 614; *Winn v. Quillan*, 2 F. 322.

(s) *Parkins v. Scott*, 1 H. & C. 153.

(t) *Speight v. Gosnay*, 60 L. J. Q. B. 231.

(u) *M'Pherson v. Daniels*, 10 B. & C. 263; *Ecklin v. Little*, 6 Ti. Rep. 366. *Mackellar*, 21 D. 222.

(x) *Bennett v. Bennett*, 6 C. & P. 588.

(y) *Somerville v. Hawkins*, 10 C. B. 583; *Harrison v. Bush*, 5 El. & Bl. 344; and see *Stuart v. Bell* [1891], 2 Q. B. 341; *Hebditch v. McIlwaine*, 1894, 2 Q. B. 54. *McMurchy v. Campbell*, 14 R. 725; *Lightbody*, 9 R. 934.

(z) *Padmore v. Lawrence*, 11 Ad. & E. 382.

but what he believes to be true. But if he imputes improper motives to others, and accuses them of attempts to extort money by misrepresentation, if irrelevant calumny is introduced, or if it contains strictures upon the motives and conduct of others which the facts stated do not warrant, he will exceed his privilege, and subject himself to an action for damages. (a) Words spoken by a medical officer to the steward of a public school to the effect that the plaintiff, a butcher, who supplied meat to the school, sold bad meat, were held privileged in the absence of malice. (b) A witness in a court of justice is absolutely privileged as to anything he may say as a witness, having reference to the inquiry on which he is called, and a statement as to another matter made to justify him in consequence of a question going to his credit is within the rule. (c)

Injunction.

The Court has jurisdiction to restrain a person making slanderous statements, but such jurisdiction will be exercised with great care. (d)

Pleading.

Where a plea of justification contains several charges, and the plaintiff replies generally denying the whole, he is entitled to a verdict, unless the defendant proves to the satisfaction of the jury the truth of all the material allegations; and if the defendant fails to do this, it is no ground for a new trial that with respect to some of the charges on which the jury gave a verdict against the defendant, the finding was against the weight of evidence. (e) A defence stating the matter complained of "is true in substance and effect" means true in every particular, and if the defendant does not prove such statement to be true, the defence is not proved, although he proves facts of the same description. (f) Where the claim alleged that one, at the request and by the direction of the defendant, uttered the slander, the plaintiff was ordered to give particulars of the names of the persons to whom, and of the place at which such slander was uttered. (g) But where a slander imputing a specific charge is justified in the

(a) *Cooke v. Wildes*, 5 El. & Bl. 340; *Popham v. Pickburn*, 7 H. & N. 891; *Andrews v. Nott-Boyer*, 1895, 1 Q. B. 888; *Malcolm v. Duncan*, 24 R. 727; *Menzies*, 1 F. 977.

(b) *Humphreys v. Stilwell*, 2 F. & F. 590. See *Wallace v. Mooney*, 12 R. 710.

(c) *Seaman v. Netherclift*, 2 C. P. D. 53; *Page v. Buchan*, 17 D. 1079; *Rome*, 25 R. 733; *Watson v. McEwan*, 1905, A. C. 480.

(d) *Loog v. Bean*, 26 C. D. 306; *Bonnard v. Perryman*, 65 L. T. 506.

(e) *Reg. v. Newman*, Dears. C. C. 85. The essence of the action in S. is that it was made without reasonable and probable cause, and this must be alleged: *Dallas v. Mann*, 15 D. 746; *Cameron v. Hamilton*, 18 D. 426. Probable cause is for the judge: *Fraser v. Hill*, 1 Macq. 392. Truth is a justification: *Torrance*, 7 Macph. 243.

(f) *Wearer v. Lloyd*, 4 D. & R. 230. See *Zierenberg v. Labouchere*, 1893, 2 Q. B. 183.

(g) *Bradbury v. Cooper*, 12 Q. B. D. 94.

defence, particulars of such plea are unnecessary, and will not be ordered. (*h*)

Evidence will be rejected where the particular facts and circumstances sought to be proved are not stated or referred to in the defence, (*i*) but any evidence is admissible to prove the absence of malice on the part of the defendant with a view to mitigate the damages. (*j*) A communication being shown to be privileged, it lies on the plaintiff to prove malice in fact; in order, however, to entitle him to have the question of malice left to the jury, he need not show circumstances necessarily leading to the conclusion that malice existed, or such as are inconsistent with its non-existence, but they must be such as raise a probability of malice, and be more consistent with its existence than with its non-existence. (*k*) The defendant may (after notice to the plaintiff delivered with his defence) give in evidence in mitigation of damages, that he made or offered an apology before the commencement of the action, or as soon thereafter as he had opportunity to do so. (*l*) Where the defendant does not by his defence assert the truth of the statement complained of, he cannot give evidence in chief to mitigate damages as to the circumstances of publication or the character of the plaintiff unless by leave of the judge or seven days before trial he furnish particulars to the plaintiff of the matters as to which he intends to give evidence. (*m*)

Whenever injury has been done to the fair fame, reputation or character of the plaintiff, the jury is justified in giving such a sum by way of damages as marks their sense of the maliciousness or recklessness of the wrongdoer in offering the insult and injury, their belief in the groundlessness of the charge and their desire to vindicate the character of the plaintiff, (*n*) and the Court will never interfere unless the damages are manifestly outrageous and extravagant. (*o*) Persistence in the charge heightens the damage, (*p*) and substantial damages may be awarded without proof of actual injury. (*q*)

(*h*) *Cumming v. Green*, 7 T. L. R. 408.

(*i*) *Scott v. Sampson*, 8 Q. B. D. 491; *Wood v. Durham*, 59 L. T. 142.

(*j*) *Pearson v. Lemaitre*, 6 Sc. N. R. 607. In S. in unprivileged slander the pursuer need only prove the use of the words, and the only competent answer is that they were true.

(*k*) *Somerville v. Hawkins*, *ubi supra*; *Jenoure v. Delmege*, 63 L. T. 814; [1891] A. C. 73; *Arthur v. Lindsay*, 22 R. 417.

(*l*) 6 & 7 Vict. c. 96, s. 1. Not applicable to S.

(*m*) Order xxxvi., r. 37; County Court Rules, Order x., rr. 16, 17.

(*n*) *Doe v. Filliter*, 13 M. & W. 51.

(*o*) *Gilbert v. Burtenshaw*, Cowp. 230; Loft. 771.

(*p*) *Simpson v. Robinson*, 12 Q. B. 511; *Bey v. Whitehurst*, 18 L. T. 615.

(*q*) *Tripp v. Thomas*, 3 B. & C. 427.

Jury. The right to trial by jury is the same as in actions of false imprisonment. (*r*)

Limitation. The action must be commenced within two years next after the words spoken. (*s*)

Trespass to
personalty.

Trespass to Personalty (*t*)

Every direct forcible injury or act disturbing the possession of goods without the owner's consent is a trespass; and if it amount to a deprivation of possession to such an extent as to be inconsistent with the rights of the owner, it then becomes a wrongful conversion. (*u*) A person who has moved the goods of another without a lawful right to do so, even to put them out of the way, is liable for the natural consequences of the removal. (*v*) Every interference with a man's lawful business or occupation without lawful excuse is actionable, such as driving the plaintiff's tenants from their holdings by menaces, (*w*) or preventing people by the use of threats and intimidation from trading with the plaintiff's vessel in a foreign port, (*x*) or from dealing at the plaintiff's shop, or from sending their children to the plaintiff's school, or placing obstructions and impediments in the way of the exercise of the right of free access to a man's place of business. (*y*)

Sheriff.

With regard to the sheriff, it is laid down that if he seize goods after a tender of the debt and costs, he is liable, (*z*) but not if he take goods on an execution which is afterwards set aside for irregularity, (*a*) or if he merely seize goods which are privileged from seizure, (*b*) or under concurrent writs. (*c*)

Execution
against wrong
person.

Trespass *vi et armis* lies against a sheriff for taking the goods of A instead of B by his bailiff upon a *fi. fa.* (*d*) And if there are two persons of the same name and address, and a writ issues

(*r*) See *ante*, p. 678. As to withdrawing the case from the jury, see *O'Brien v. Salisbury*, 54 J. P. 215.

(*s*) 21 Jac. I. c. 16, s. 3. As to costs S., 31 & 32 Vict. c. 100, s. 40; *Hunter v. Russell*, 3 F. 596, I., 16 & 17 Vict. c. 113, s. 20.

(*t*) The corresponding action in S. is that of *spuilzie* which is a penal action.

(*u*) Underhill, Torts, 6th ed., 316. Possession is sufficient title to maintain the action: *Smith v. Miller*, 1 T. R. 480; *Walker v. Baird*, 1892, A. C. 286. As to conspiracy, see *Mogul Steamship v. Macgregor*, 1892, A. C. 25; *Quinn v. Leatham*, 1901, A. C. 495. And as to individual acts, per *Romer, L.J.*, *Giblan v. National*, 5 C.,

Union, 1903, 2 K. B. 619; *Sweeney v. Coote*, 1906, 1 I. R. 51.

(*v*) *Walker v. Sheerman*, 3 F. & F. 259.

(*w*) 1 Roll. Abr. 108, pl. 21.

(*x*) *Tarleton v. M'Gawley*, Peake 270.

(*y*) *Bell v. Midland Railway Co.*, 10 C. B. N. S. 307.

(*z*) *Lefans v. Moregreen*, 1 Keb. 655; *Barker v. St. Quintin*, 12 M. & W. 441; *Clyne v. Murray*, 9 S. 338; *Ritchie v. Dunbar*, 11 D. 282.

(*a*) *Doe v. Thorn*, 1 M. & S. 425.

(*b*) *Rideal v. Fort*, 11 Ex. 847.

(*c*) *Lee v. Dangar*, 1892, 1 Q. B. 231.

(*d*) *Sanderson v. Baker*, 3 Wils. 309; 2 W. Bl. 842; *Ackworth v. Kempe*, 1 Doug. 40.

against one of them, and the sheriff through inadvertence or mistake executes the writ against the wrong person, he is liable. (e)

Where under a *fi. fa.* against A the furniture in his house was seized and sold, where he lived with a woman with whom he had gone through the ceremony of marriage, and to whom the goods belonged before marriage, it was held that the woman having afterwards discovered that the marriage was void, might maintain an action against the sheriff, and recover the value of the goods, although it exceeded the price for which they were sold. (f) But where the property belonged to a woman who cohabited with the debtor, assumed his name, and represented herself as his wife, the action was not maintainable. (g)

The sheriff is liable to an action by the owner of goods lent on hire if having seized them under an execution against the hirer, he sells the entire property in them; but the hirer must have given notice to the sheriff on the seizure, (h) and for the mere seizure without sale he is not liable. (i)

As to interpleader proceedings, see *ante.* (j) Where neither the premises nor the goods belong to the debtor, the sheriff may on such proceedings be protected against an action for trespass, or for wrongful seizure if no substantial grievance has been done. (k)

And where the sheriff is directed to levy on the goods of a wrong person, he is under no liability for so doing. (l)

An action lies at the suit of an administrator for taking away the goods of an intestate. (m) But where an executrix used the goods of her testator as her own, and afterwards married, and then treated them as the goods of the husband, it was held that the action was not maintainable. (n)

A landlord may maintain an action against him for removing Landlord goods before the rent has been satisfied, (o) and so may his

(e) *Jarman v. Hooper*, 6 M. & G. 827.

(f) *Glasspoole v. Young*, 9 B. & C. 696.
See *Nelmes*, 10 R. 891.

(g) *Edwards v. Farebrother*, 2 M. & P. 293.

(h) *Dean v. Whittaker*, 1 C. & P. 347.
See *Jelks v. Hayward*, 1905, 2 K. B. 460, goods lent under a hire-purchase agreement reserving right to lender to terminate if goods taken in execution.

(i) *Duffill v. Spottiswoode*, 3 C. & P. 435.

(j) Page 643.

(k) *Smith v. Critchfield*, 14 Q. B. D. 873. And see *Walsh v. Goodman*, 1905, 2 I. R. 241, where it was held that a claimant

who had commenced proceedings in interpleader on a civil-bill decree was barred from pursuing any remedy which he might have had against the sheriff independently of the Act, and that the sheriff should after the prescribed time pay the money which had been paid by the claimant in respect of the goods over to the execution-creditor.

(l) *Morris v. Salberg*, 22 Q. B. D. 615.

(m) *Tharpe v. Stallwood*, 5 M. & G. 760.

(n) *Quick v. Staines*, 1 B. & P. 293.

(o) *Calvert v. Joliffe*, 2 B. & Ad. 418; *Haythorn v. Bush*, 2 Dowl. 641; 2 C. & M. 689; *Cocker v. Musgrove*, 15 L. J. Q. B. 365.

executor, (*p*) but not the administrator, whose title dates from a time when the execution is complete. (*q*) Where the bailiff in possession of goods under a landlord's distress received a *fi. fa.* from a sheriff and sold the goods under it, the sheriff was held liable to action at the suit of the landlord. (*r*)

Selzure.

Where the sheriff sells more than sufficient to satisfy the debt and costs he is liable for the excess. (*s*) And he is also liable, if he sell for less money than ought to have been obtained. (*t*) But if a judgment debtor have a qualified interest only as a bailee in goods seized, and the sheriff, having no notice thereof, sells them absolutely, he is not guilty of a conversion by the mere act of selling. It must be shown that he parted with the possession of the goods and caused them to be used by the purchaser. (*u*) Nor is he liable for selling contrary to an unauthorized order on behalf of the creditor to postpone the sale. (*w*) And if he sells goods under a *fi. fa.*, and afterwards the judgment is reversed, the defendant cannot have restitution, but the value for which they were sold. (*x*)

Admiralty
marshal.

If the Admiralty marshal pursue a ship and arrest her after she has sailed, he would appear to be liable to this action. (*y*)

County court.

In the County Court, where the judge had adjudicated in favour of a claimant whose house had been broken and entered and his goods seized and taken away as the goods of an execution debtor, it was held that the claimant could not afterwards proceed in an action of trespass for taking away the goods. (*z*)

Water bailiff.

And where a water-bailiff removed what proved to be an illegal fixed engine from a salmon river, it was held that an action against him for such removal was not sustainable. (*a*) Nor was it against a surveyor for removing a bar to a public way. (*b*)

Distress.

With regard to wrongful distress, (*c*) it has been held that the jurisdiction of the High Court is not ousted by the Taxes

(*p*) *Palgrave v. Windham*, 1 Stra. 212.

(*q*) *Waring v. Dewberry*, ib. 97.

(*r*) *Reddell v. Stowey*, 2 M. & Rob. 358; *Gordon v. Harper*, 7 T. R. 9; *Bible v. Hussey*, 1 R. 2 C. L. 308.

(*s*) *Batchelor v. Vyse*, 4 M. & Sc. 552; *Aldred v. Constable*, 6 Q. B. 370; *Henderson v. Rollo*, 10 M. 104; *Hughes v. Browne*, 7 Ir. L. R. 492.

(*t*) *Gawler v. Chaplin*, 2 Ex. 506.

(*u*) *Lancashire Co. v. Fitzhugh*, 6 H. & N. 502.

(*w*) *Whyte v. Nutting*, 1897, 2 I. R. 241.

(*x*) *Hoe*, 5 Rep. 90 b.

(*y*) *Borjesson v. Carlberg*, 3 A. C. 1316;

Petersen v. McLean, 6 M. 218.

(*z*) *Chater v. Chignell*, 15 Q. B. 217. See *Le Conte v. Douglas*, 8 R. 175; cf. *L. C. & D. Ry. v. Cable*, 80 L. T. 119.

(*a*) *Williams v. Blackwall*, 32 L. J. Ex. 174; *McLellan v. Ramsay*, 3 S. 306.

(*b*) *Pullin v. Deffel*, 64 L. T. 134.

(*c*) The ancient remedy for wrongful distress was *replevin*, which is now obsolete except in I. and in the County Court; *Gilbert on Repl.*, p. 138; *County Court Rules*, 1889, Order xxxiv.; *Pollock, Torts*, 2nd ed., 299. In such an action 24 Geo. II. c. 44, s. 6 is inapplicable: *Milward v. Caffin*, 2 W. Bl. 1331; and see *ante*, p. 626.

Act. (d) And where the plaintiff who was the owner and occupier of the vicarial tithes and occupier of the rectorial tithes on which the land-tax had been redeemed, was assessed to land-tax for a gross sum for both, which on demand, he refused to pay, whereupon the collector distrained, it was held that trespass lay for the distress, and that the plaintiff was not bound to appeal. (e) A conviction on a statute on the face of it, not pursuing the provisions of the statute nor showing that any offence had been committed, is bad, and although it has not been quashed, its invalidity may be taken advantage of on the trial of an action of trespass for a distress taken under a warrant grounded upon it. (f) But a party making a wrongful distress for two causes as to one of which he is entitled to protection, is liable in trespass as to the other. (g) And parties executing distress for poor-rate are liable if they commit any excess not excused by law. (h) And so was a highway surveyor if he executed a warrant for highway-rate against a person not chargeable. (i)

Where a revenue officer unlawfully seizes goods as forfeited, and unlawfully detains them, and takes money which he has no right to take as the condition of their release, he is liable to action. (j) But where goods liable to duty have been landed and warehoused and examined by officers in the regular execution of their duty, no action can be maintained against such officers for the detention of goods under a belief that they are liable to forfeiture, though it ultimately appears that they were not so liable. (k) And condemnation in the Exchequer is conclusive against any such action being maintainable. (l) Where action was brought after the penalty had been paid, and there had been no demand for return of the goods, it was held not to lie. (m)

And where a police officer came into possession of a ring which the plaintiff was supposed to have stolen, but was acquitted on the hearing of the charge, and no order having been made by the magistrate with regard to it, refused to give it up, it was held

(d) *Shaftesbury v. Russell*, 1 B. & C. 666.

(e) *Charleton v. Alway*, 11 A. & E. 998.

(f) *Gimbert v. Coyney*, M'Lel. & Y. 469.

(g) *Lamont v. Southall*, 7 D. P. C. 469;
Governors of Bristol Poor v. Wait, 1 A. & E. 264.

(h) *Bell v. Oakley*, 2 M. & S. 259; *Oukelley v. Campbell*, 6 M. 12. The overseers are not responsible for the acts of the assistant overseer: *Baker v. Wicks*, 1904, 1

K. B. 743.

(i) *Freeman v. Read*, 32 L. J. M. C. 226.

(j) *Irving v. Wilson*, 4 T. R. 485; *Leglise v. Champante*, 2 Str. 820.

(k) *Jacobsohn v. Blake*, 6 M. & G. 919;
De Gondouin v. Lewis, 2 P. & D. 283;
Pyper v. Ingram, 3 F. 514.

(l) *Scott v. Shearman*, 2 W. Bl. 977.

(m) *Hutchings v. Morris*, 6 B. & C. 464.

that the officer was not liable to action at the suit of the plaintiff for the detention. (n) But where he seized eggs under a statute which allowed this to be done and proceeded under another statute which did not and failed, he was held liable. (o)

Where a postmaster delivered up letters of a bankrupt to a trustee believing *bonâ fide* that he was entitled to them, it was held he was not liable for wittingly, willingly and knowingly detaining letters and causing them to be detained and opened. (p)

Injunction.

The Court will not, in the absence of a trust, restrain the sheriff from selling the goods of a stranger found upon the land of a person against whom execution had issued. (q) But if goods have been wrongfully seized by him it is otherwise, and he may be restrained from selling or remaining in possession, but the execution creditor should either be made a party to the action or notice should be served on him before the injunction is granted. The plaintiff will not get his costs of such an action prematurely brought. (r)

Pleading.

In an action against the sheriff the claim after reciting that two writs of *fi. fa.* had been delivered to him to be executed stated that defendant as such sheriff, under colour of the writs, wrongfully seized the goods of the plaintiff to a much greater value than necessary to satisfy, and sold the same. This was held sufficient. (s)

The most usual defence in actions for taking the plaintiff's goods is that they had been fraudulently assigned. This charge is admissible under a denial of the plaintiff's property. (t) But the defendant cannot show that the plaintiff became assignee after delivery of the writ to the sheriff. (u) If the defence is fraudulent assignment, the intent must be proved. (x) The fact of no sufficient consideration is evidence of fraud. (y)

In actions for removing goods seized without paying the rent after notice of its being due, no averment of notice to the execution-creditor is necessary. (z) But if the action is founded on the statute, notice to the sheriff is always alleged and should not be omitted. (a) And where in such an action the defence was

(n) *Bullock v. Dunlap*, 2 Ex. D. 43.

(o) *Stowe v. Benstead*, 1909, W. N. 119.

(p) *Meirelles v. Banning*, 2 B. & Ad. 909. See 2 Stra. 1005; *Peddle*, 1 Broun 235.

(q) *Garstin v. Asplin*, 1 Madd. 151; *Jackson v. Stanhope*, 15 L. J. Ch. 446.

(r) *Hilliard v. Hanson*, 21 Ch. D. 69; *Aylwin v. Evans*, 47 L. T. 568.

(s) *Gawler v. Chaplin*, *ubi sup.*

(t) *Ashby v. Minnitt*, 8 Ad. v. & E. 121.

(u) *Samuel v. Duke*, 3 M. & W. 622.

(x) *Ex p. Mercer*, 17 Q. B. D. 290; *Godfrey v. Poole*, 13 A. C. 497.

(y) *Gale v. Williamson*, 8 M. & W. 405.

(z) *Riseley v. Ryle*, 11 M. & W. 16.

(a) *Thurgood v. Richardson*, 7 Bing. 428. See *Reed v. Thoyts*, 6 M. & W. 410.

that the sheriff seized goods which were alleged to belong to S, but which did not, in fact, belong to him, the plaintiff was nevertheless held entitled to a verdict. (b) It is not sufficient for the defendant to show in mitigation of damages that the goods realized less than the amount of the rent, but he must prove that their actual value to the landlord at the time of removal was less. (c)

Where a sheriff's officer, having a *fi. fa.* against A, called at his house when he was from home, waited till he returned, and then informed him of his business, this was held sufficient to warrant the jury in finding that the writ was executed at the time of the officer's entry. (d) A sheriff justifying in trespass under a writ of *fi. fa.* need not show his authority. (e)

In an action for abusing the process of the Court in order Evidence. illegally to compel a party to give up his goods, it is not necessary to prove that the action under which the process was improperly employed has determined, nor to aver that the process was sued out without reasonable and probable cause. (f) If the goods of a third party are seized as the debtor's, and he allows time to elapse before enforcing his rights, he is estopped from denying that the goods are the debtor's. (g)

[In Scotland, malice and want of probable cause must be averred and proved in an action of damages founded on an arrestment of a ship on the dependence of an action from which the defender was assoilzied. (h) But this is not necessary in an issue of damages against a customs officer.] (i)

An affidavit made by a sheriff's officer under the Interpleader Act respecting the goods is admissible to prove the officer to be the servant of the sheriff. (k)

And where plaintiff, being owner and occupier of the vicarial tithes and occupier of the rectorial tithes, on which latter tithe the land-tax has been redeemed, was assessed to land-tax on a gross sum for which on refusal, the collector distrained, it was held that the demand having been made for a sum alleged to be due for a quarter then expired, defendant could not justify the distress by showing that a sum was due at the expiration of the current quarter for vicarial tithes which would cover the sum distrained for. (l)

(b) *Forster v. Cookson*, 1 Q. B. 419.

(c) *Thomas v. Mirchouse*, 19 Q. B. D. 563.

(d) *Bird v. Bass*, 6 M. & G. 143.

(e) *Cheasley v. Barnes*, 10 East 73; *Ogden v. Hesketh*, 2 C. & K. 772.

(f) *Grainger v. Hill*, 4 Bing. N. C. 212.

(g) *Pickard v. Sears*, 6 A. & E. 469; *Freeman v. Cooke*, 2 Ex. 554.

(h) *Woltheke*, 35 Jur. 156.

(i) *Christie v. Thompson*, 20 D. 1114; *cf. Watt v. Blair*, 1 S. App. 43.

(k) *Brickhill v. Hulse*, 2 N. & P. 426.

(l) *Charleton v. Alway*, 11 A. & E. 993.

In an action for excessive distress it is not necessary to prove express malice. (m)

Damages.

Damages must be both alleged and proved in an action against the sheriff for wrongful seizure, (n) and any special damage that has been sustained is recoverable. (o) The plaintiff is entitled to be placed in the same position as if the defendant had done his duty. (p) But all the probabilities must be looked at. (q)

Where the defendants had become trespassers *ab initio* by breaking the door, the jury were rightly directed that they might give damages in respect of all the injuries complained of. (r) In an action for removing goods without paying the rent due the measure of damages is *prima facie* the amount of rent, but the sheriff may prove that the value of the goods removed was less than that amount. (s) The price of the goods sold is not necessarily, but is usually, the measure of damages if the sale be wrongful. (t) In an action for taking goods under irregular process, where special damage is alleged and claimed but not proved, the plaintiff is entitled to nominal, or such substantial damages as the jury thinks fit. (u)

Whenever a public officer has wrongfully seized and detained goods from the owner, the latter is entitled to recover the loss resulting from the wrongful act, so that if the property detained has fallen in value in the market, the plaintiff is entitled to add the amount of that to the damage he has sustained. (x)

Limitation.

The action must be commenced within four years after the cause thereof. (y)

Trespass to Realty.

Trespass to Realty (z)

Every unauthorized entry upon or direct interference with another's land is a trespass for which an action lies without proof of actual damage. (a) And if a man abuse an authority given him by the law as distinguished from that of the party,

(m) *Field v. Mitchell*, 6 Esp. 71.

(n) *Tancred v. Allgood*, 4 H. & N. 444.

(o) *Keene v. Dilke*, 4 Ex. 388.

(p) *Aireton v. Davis*, 9 Bing. 740; *Bales v. Wingfield*, 4 Q. B. 580, n.

(q) *Hobson v. Thelluson*, L. R. 2 Q. B. 642; see *Lee v. Dangar*, 1892, 1 Q. B. 231.

(r) *Kerbey v. Denby*, 1 M. & W. 336.

(s) *Thomas v. Mirchouse*, *ubi sup.*; *Wren v. Stokes*, 1902, 1 I. R. 167.

(t) *Whitehouse v. Atkinson*, 3 C. & P. 344; *Lee v. Lopes*, 15 East 230.

(u) *Doss v. Doss*, 14 L. T. 646; *Snaddon*

v. Stewart, 2 Mur. 72.

(x) *Barrow v. Arnaud*, 8 Q. B. 595; *O'Neill v. Dumfries*; *Beattie v. McLellan*, *ante*, p. 678.

(y) 21 Jac. 1. c. 16, s. 3. S., 3 years, 1579, c. 81. As to costs, see 31 & 32 Vict. c. 100, s. 40. I., 16 & 17 Vict. c. 113, s. 20.

(z) This action answers in S. *semble* to that of ejection which is penal.

(a) *Underhill*, p. 303. Possession is a sufficient title to maintain the action: *Jones v. Chapman*, 2 Ex. 821; see *Walker v. Baird*, 1892, A. C. 491.

as in leave and licence, he becomes a trespasser *ab initio*. (b) But mere non-feasance does not constitute him such a trespasser. (c)

If there is an abuse of authority by which the party becomes a trespasser *ab initio*, the plaintiff is entitled to recover damages as well for the part or injury which would have been justified if there had been no abuse as for the part which is directly caused by the abuse. (d) And the rule that a party cannot be made a trespasser by relation is only applicable where the act complained of was lawful at the time. (e)

This action will lie for continuing on the premises and disturbing the plaintiff's possession after the time allowed by law, (f) or after distress made. (g)

If a sheriff remain on premises for the purpose of putting the Sheriff. purchaser of a lease in possession he would be liable to this action at the suit of the debtor if in possession, although the premises had been sold and transferred. (h)

Where a judge of the County Court adjudicated in favour of County court. a claimant whose house had been broken and entered and his goods seized and taken away as those of the execution debtor, it was held that the claimant was afterwards entitled to proceed for the special damage occasioned by the wrongful breaking and entry. (i)

Where a search warrant was executed by a constable to whom Constables. it was not addressed, this action was held to lie. (k) But where a constable on hearing a noise in a public house at one o'clock in the night, entered the house, the door being open, the action was held not to lie. (l)

Where churchwardens entered premises in pursuance of an order of the Secretary of State, which proved to be invalid, they were held liable. (m)

Overseers executing a distress for poor-rate are liable if they Overseers. commit any excess not excused by law. (n)

A surveyor who had removed by order of the highway board Surveyor. the locks from a gate placed across a footpath by the occupier of the land through which it ran, was held liable to this action

(b) As to this doctrine, see *ante*, pp. 617, 634.

(c) *Six Carpenters' Case*, 8 Rep. 146 a.

(d) *Kerbey v. Denby*, 1 M. & W. 341; *Aitkenhead v. Blades*, 5 Taunt. 198.

(e) *Tharpe v. Stallwood*, 5 M. & G. 760.

(f) *Winterbourne v. Morgan*, 2 Camp. 117; *Lee v. Dangar*, *ubi sup.*

(g) *Ladd v. Thomas*, 4 P. & D. 9.

(h) *Playfair v. Musgrove*, 14 M. & W. 239; *Reed v. Harrison*, 2 W. Bl. 1218; see *Bagshawes v. Deacon*, 1898, 2 Q. B. 173.

(i) *Chater v. Chignell*, 15 Q. B. 217.

(k) *Freegard v. Barnes*, 7 Ex. 827; see *Pringle v. Bremner*, 5 M. (H.L.) 55.

(l) *R. v. Smith*, 6 C. & P. 136.

(m) *Foster v. Dodd*, L. R. 3 Q. B. 67.

(n) *Bell v. Oakley*, 2 M. & S. 259.

notwithstanding the order of the board, (o) and so also was he where he dug away the plaintiff's bank without authority, although evidence was given that the property was thereby improved, (p) and where on an order to lop trees he topped them. (q)

Forcible entry. An attempt to eject by force a person having a legal title to land brings the person who makes it within the statute against forcible entry, (r) and damages cannot be recovered in such case, (s) except for independent wrong committed in the course of such entry. (t) But an allegation *vi et armis* in an action for breaking and entering does not imply a forcible entry. (u)

Injunction. The Court will not, it appears, grant an injunction in respect of an interference with a church way at the suit of a parishioner, the ecclesiastical courts having jurisdiction in such cases. (x) But a local authority interfering with property in an unauthorized manner, as, *e.g.*, when not authorized under the Public Health Act, will be restrained, and the plaintiff will not be left to his remedy under the compensation clauses. (y) An appeal to a superior board does not oust the jurisdiction of the Court. (z) If a public board exceed the due limits of their authority, and commit acts of nuisance, whether of a public or private (a) nature, the Court may restrain by injunction, (b) unless the jurisdiction is expressly negatived. (c) As regards apprehended injury, the Court will not usually interfere unless the damage will be irreparable. (d)

Pleading. If the defendant relies upon the defence of leave and licence, he must prove either an express permission from the plaintiff, (e) or circumstances from which such permission may fairly be implied. (f) The defendant may justify under a sufficient legal process, if he had it in fact at the time, although he declared then that he entered for another cause. (g) To render a defendant liable as a trespasser *ab initio*, facts sufficient to support this

(o) *Mill v. Hawker*, L. R. 10 Ex. 92.

(p) *Alston v. Scales*, 9 Bing. 3.

(q) *Unwin v. Hanson* [1891], 2 Q. B. 115; see *Brooke v. Jenney*, 6 Q. B. 323.

(r) *Lowe v. Telford*, 1 App. Cas. 414; and see *infra*, p. 706.

(s) *Newton v. Harland*, 1 M. & G. 644.

(t) *Beddall v. Maitland*, 17 Ch. D. 174.

(u) *Harrey v. Bridges*, 1 Ex. 261.

(x) *Batten v. Gedye*, 41 C. D. 507.

(y) *Grand Junction Canal v. Shugar*, 6 Ch. App. 483; *Roberts v. Gwyrfai*, 1899, 2 Ch. 608. Bnt see *Montgomerie*, 45 Sc. L. R. 73.

(z) *Tinkler v. Wandsworth*, 2 De G. & J. 261.

(a) *Box v. Allen*, 1 Dick. 49.

(b) *Att.-Gen. v. Forbes*, 2 M. & C. 133.

(c) *Birley v. Chorlton*, 3 Beav. 499.

(d) *Palmer v. Paul*, 2 L. J. Ch. O. S. 154; *Fletcher v. Bealey*, 28 Ch. D. 688. See also as to injunctions, *Att.-Gen. v. Metropolitan Board of Works*, 1 H. & M. 320; *Macey v. ib.*, 33 L. J. Ch. 377; *Bateman v. Poplar*, 37 Ch. D. 272; *Att.-Gen. v. Richmond*, 2 Eq. 306; *Ellis v. Bridgnorth*, 2 J. & H. 67.

(e) *Karanagh v. Gudge*, 7 M. & G. 316.

(f) *Ditcham v. Bond*, 3 Camp. 524.

(g) *Crowther v. Ramsbottom*, 7 T. R. 654; and *cf. Playfair v. Musgrove*, 14 M. & W. 239.

must be stated in the claim. (*h*) The action may be well laid to have been done under a false charge and assertion, for that is laid only as a matter of aggravation, and the jury may give damages for the trespass, as it is aggravated by such false charge. (*i*) In an action for breaking and entering plaintiff's house and expelling him therefrom, the breaking and entering are the gist of the action, and the expulsion is merely aggravation; therefore a justification as to the breaking and entering will cover the whole claim. (*k*)

The defendant may give in evidence that he entered by virtue of a warrant and was turned out, whereupon he committed the trespasses complained of. (*l*) But a party who insists on remaining on the land of another against his will, and therefore *prima facie* against right, ought to show all the circumstances which make such possession lawful and abridge the general rights of property. (*m*) Where the defendant put in an informal affidavit to the effect that he had entered under a warrant to search for dutiable goods, it was held no defence. (*n*) And where a local authority is sued for a trespass, it is incumbent on them to prove affirmatively from the statute the existence of the power which they claim to exercise. (*o*)

Where the defendants had become trespassers *ab initio* by breaking the door, the jury were rightly directed that they might give damages in respect of all the injuries complained of. (*p*) The true criterion of damages has been held to be the whole injury which the plaintiff has received. (*q*) If the entry is made after notice or warning not to trespass or is a wilful or impertinent intrusion upon a man's domestic privacy, or an insulting invasion of his proprietary rights, a very serious cause of action will arise, and exemplary damages be recoverable. (*r*) But it has been held that a plaintiff is not entitled to recover as damages the costs of setting aside a warrant, and all subsequent proceedings under which the trespass was committed. (*s*)

The action must be commenced within six years next after the cause thereof. (*t*)

(*h*) *Shorland v. Gorett*, 5 B. & C. 485; and see *Morrish v. Murrey*, 13 M. & W. 52; and *Johnson v. Leigh*, 1 Marsh. 565.

(*i*) *Bracegirdle v. Orford*, 2 M. & S. 77.

(*k*) *Taylor v. Cole*, 3 T. R. 292.

(*l*) *Eagleton v. Gutteridge*, 11 M. & W. 465.

(*m*) *Hayling v. Okey*, 8 Ex. 531.

(*n*) *Davis v. Moseley*, 1 C. & K. 710.

(*o*) See *Sutton v. Norwich*, 27 L. J.

Ch. 741; *Simpson v. Staffordshire Waterworks*, 34 ib. 387.

(*p*) *Kerby v. Denbey*, *ubi supra*.

(*q*) *Clark v. Newsam*, 1 Ex. 131.

(*r*) *Merest v. Harvey*, 5 Taunt. 448; *Emblen v. Myers*, 6 H. & N. 54.

(*s*) *Holloway v. Turner*, 6 Q. B. 928.

(*t*) 21 Jac. I. c. 16, s. 3. S., 3 years, 1579, c. 81. As to costs, see 31 & 32 Vict. c. 100, s. 40; L., 16 & 17 Vict. 113 s. 20.

Attachment is the punitive process to which the High Court resorts for excess of public duty on the part of its officers. As a remedy to an individual it is like all other public process only available where damage has been sustained through such excess of duty, by such individual. (a)

Being confined to officers of the Court it is only available against the Sheriff, the Admiralty Marshal, the Tipstaff, and the High Bailiff. (b)

As against the sheriff it has been laid down that attachment may be moved for in any of the following cases:—

Arrest without authority.

Breaking doors without excuse.

Corrupt practices.

Detaining person till he pays money for his release.

Extortion.

False return, where circumstances of hardship to plaintiff.

Force, using needless.

Ill-treating persons arrested.

Neglecting to execute. (c)

The process must be moved for within a reasonable time. (d)

If the sheriff has executed the writ and has in his hands or possession, the proceeds of the execution, he is at once liable to

(a) *Soltau v. de Held*, 2 Sim. N. S. 133. The messenger-at-arms in S. is the officer of the Lord Lyon. He can deprive or suspend him for malversation: *Clyne*, 9 S. 338. So also can the Court of Session. He may be deemed against to the extent of the penalty contained in the bond of caution: *Hog IV*. Brown Sup. 355. If he take fees or a bill including expenses, he will be liable to summary complaint: *M'Lachlan*, 1 S. 236. The mace is also the officer of the court and so is the sheriff's officer. Every criminal act entitles the

injured person to damages, but the proceedings appear to be only at the suit of the Lord Advocate or Procurator-Fiscal: *Graham*, 2 Brown 85. Private prosecution is practically unknown.

(b) See *ante*, p. 647. As to officers other than the sheriff, the process is rarely or never resorted to. But see per Willes, J., *London v. Cox*, L. R. 2 H. L. 256.

(c) Hawk. P. C. Bk. 11. c. 22, ss. 2, 3 and 4; and see 50 & 51 Vict. c. 55, s. 29.

(d) *R. v. Perring*, 3 B. & P. 151.

this process. (e) But the old rule as to attachment absolute in the first instance is abrogated. (f)

The death of the defendant will not remove the sheriff's liability; (g) but if any of the proceedings against the sheriff be irregular, the Court will set aside the attachment. (h)

The service of the writ must be personal on the sheriff or his deputy. (i) An order for attachment or committal must be applied for on notice. (k)

The process is directed to the coroner when it issues against the sheriff, and to the present sheriff when it issues against his predecessor. (l)

Information (m)

Information.

Every public officer commits a misdemeanour who in the exercise or under colour of exercising the duties of his office, does any illegal act, or abuses any discretionary power with which he is invested by law, from an improper motive, the existence of which motive may be inferred, either from the nature of the act or the circumstances of the case. But an illegal exercise of authority caused by a mistake as to the law, made *bonâ fide*, is not a misdemeanour. (n)

An officer executing a warrant upon a person absolutely privileged would render himself liable to this process. (o)

If police officials appear as advocates before justices in cases in which they are not properly prosecutors, they are guilty of misdemeanour by virtue of 6 and 7 Vict. c. 73, s. 2, and the proceedings being irregular, a conviction will be quashed. (p)

Refusing admission to persons to a Court of petty sessions, when an open Court is another instance. (q)

(e) *Phillips v. Canterbury*, 11 M. & W. 619; *Botten v. Tomlinson*, 16 L. J. C. P. 138.

(f) *Jupp v. Cooper*, 5 C. P. D. 26; *Eynde v. Gould*, 9 Q. B. D. 335.

(g) *R. v. Sheriff of Middlesex*, 3 T. R. 133.

(h) *R. v. Sheriff of Middlesex*, 2 M. & S. 562.

(i) *Woodland v. Fuller*, 11 A. & E. 859.

(k) *Tidd*, 8th ed., 314; *Chit. Arch.*, 7th ed., 556.

(l) Order xlv., r. 2. *Jupp v. Cooper*, *ubi supra*.

(m) In the case of offences not cognisable by a Court of Summary Jurisdiction, the remedy is of course by indictment. See *R. v. Hall*, 1891, 1 Q. B. 747.

(n) *Steph. Dig. Crim. Law*, Art. 121;

R. v. Wyat, 1 Salk. 330; *Crouther, Cro. Eliz.* 654.

(o) See *ante*, p. 7, and *ex p. Smith*, 7 Ti. L. R. 42.

(p) *Nicholson v. Booth*, 57 L. J. M. C. 43; and see *Kyle v. Barbor*, 58 L. T. 229; and *R. v. Bushell*, 16 Cox 367. 1., see 25 & 26 Vict. c. 50, and *R. v. Wicklow*, 30 L. R. 1. 633. As to weights inspectors, see 4 Ed. VII. c. 28, s. 14; *Tyler v. Ferriss*, 1906, 1 K. B. 94. In the case of revenue officers, they are entitled to conduct cases before justices. See 53 & 54 Vict. c. 21, s. 27, and 39 & 40 Vict. c. 36, s. 273; 1 Ed. VII. c. 22, ss. 120, 125; *Dyer v. Tully*, 1894, 2 Q. B. 794; and *cf. Cox v. Coleridge, ante*, p. 246.

(q) 11 & 12 Vict. c. 42, ss. 17, 19.

Where, some years since, a murder had been committed, a police official held a sort of informal inquiry into the circumstances attending the murder. This was clearly an excess of authority, and rendered the officer liable to this process. (*r*) And the same would apply in the case of the illegal practice of interrogating persons under arrest. (*s*) In the case of any persons whether under arrest or not, there is of course no obligation to answer. Such obligation is usually confined to witnesses in open Court.

An information lies also against officers employed by or under the post office if they suffer letters to be hindered, delayed or opened, (*t*) and also against persons not so employed. (*u*)

It also lay against highway surveyors for not filling up and fencing holes within due time, (*x*) for causing stones or other obstructions to remain at night on the highway to the danger of passengers, (*y*) for digging for materials whereby any bridge, building, etc., is damaged, (*z*) and in these cases the civil liability remained. (*a*)

Tax collectors and overseers are also liable to this process for taking more than the fees allowed on a distress. (*b*) And so are workhouse and asylum officers for unlawful detention of a lunatic, (*c*) or for ill-treatment, (*d*) or abuse of a female lunatic. (*e*) But the mode of procedure in these cases is limited to that of prior consent of the Crown law officers, except where commenced by superior officers. (*f*)

As has been above stated, inasmuch as the Sheriff, Admiralty Marshal, Tipstaff, and High Bailiff are liable to attachment, this remedy is not open against them. (*g*)

Assault and Battery.

Assault and Battery

An assault is an attempt or offer with force and violence to do a corporal hurt to another as by striking at him with or without a weapon, or presenting a gun at him at such a distance

(*r*) See Amos on the Constitution, 3rd ed., pp. 131, 134.

(*s*) Taylor, Evidence, 6th ed., 779; Millar, 3 Irv. 406.

(*t*) 8 Ed. VII. c. 48, s. 56.

(*u*) S. 54.

(*x*) 5 & 6 Will. IV. c. 50, s. 55.

(*y*) S. 56; see *Hardcastle v. Beilby*, 1892, 1 Q. B. 709.

(*z*) S. 57. See also 41 & 42 Vict. c. 51, s. 124, and 14 & 15 Vict. c. 92, s. 10, *ante*, pp. 453, 576.

(*a*) See now 56 & 57 Vict. c. 73, s. 25.

(*b*) 57 Geo. III. c. 93, s. 6.

(*c*) 53 & 54 Vict. c. 5, s. 315.

(*d*) S. 322.

(*e*) S. 324: 1 Ed. VII. c. 17, s. 2.

(*f*) S. 325. Cases may possibly arise where officers with a view to gain may cause to be published false news as to sedition. This is a misdemeanour: Steph. Dig. C. L. Art. 95.

(*g*) See *ante*, pp. 647, 696.

as the gun will carry, or pointing a pitchfork at him standing within reach of it, or by holding up one's fist to him, or by any such like act done in an angry, threatening manner. *(h)* Any injuries whatsoever, be they ever so small, being actually done to the person of a man, in an angry, revengeful, rude or insolent manner, as by spitting in his face, or anyway touching him in anger, or violently jostling him out of the way, are batteries. *(i)*

A magistrate has no right to order the examination of the person of a prisoner. Any officer making examination in pursuance of such order is therefore guilty of assault, *(k)* and so are officers who cut unnecessarily the hair of a pauper in the poor-house. *(l)* But it is doubtful whether the mere presentation of a pistol, which is in fact not loaded, at another is an assault, *(m)* and it is no battery to lay one's hand gently on another whom an officer has a warrant to arrest. *(n)* But if more force than necessary be used it is otherwise. *(o)* A person charged with assault and battery may be found guilty of either offence. *(p)*

A battery cannot be justified by an officer unless there was resistance in the party, *(q)* and though one cannot justify by pleading *son assault demesne* in the indictment, this may be given in evidence. *(r)* It is a good defence to prove that the battery occurred by misadventure, *(s)* or that it occurred in arrest on legal process, *(t)* provided no greater force than necessary was used, *(u)* or in cases not criminal that it was by consent. *(x)* It is also a good defence to show that the complaint has been heard and determined by two justices. *(y)*

Common Nuisance

Common
nuisance.

A common nuisance is indictable at common law.

Every injury to public rights which affects all parties alike, such as an obstruction in a public thoroughfare merely impeding the right of passage and rendering the way less convenient, is

(h) Hawk. P. C. c. xv. s. 1; *R. v. Baker*, 1 C. & K. 254; *R. v. Duckworth*, 1892, 2 Q. B. 83; *Stewart*, 2 Sc. Jur. 32; *Mar Bell's* notes, 89.

(i) Hawk. P. C. c. xv. s. 2; *Cairns*, 1 Swin. 597.

(k) *Agnew v. Johnson*, 13 Cox C. C. 625.

(l) *Furde v. Skinner*, 4 C. & P. 239.

(m) *R. v. Brown*, 10 Q. B. D. 381.

(n) Hawk. P. C. c. xv. s. 2.

(o) *R. v. Mabel*, 9 C. & P. 474; *Lery v. Edwards*, 1 C. & P. 40.

(p) Hawk. P. C. c. xv. s. 1.

(q) *Williams v. Jones*, Ca. temp. Hard. 301.

(r) *Per Holt*, C. J., *R. v. Cotesworth*, 6 Mod. 172.

(s) *Gibbon v. Pepper*, 2 Salk. 637; and see *Coward v. Baddeley*, 4 H. & N. 478.

(t) 2 Roll. Abr. 547 a.

(u) *Truscott v. Carpenter*, 1 Ray. 229; *Williams v. Jones*, 2 Str. 1049; *Lery v. Edwards*, 1 C. & P. 40.

(x) *R. v. Coney*, 8 Q. B. D. 534.

(y) 24 & 25 Vict. c. 100, ss. 44, 45. See ante, p. 652.

only remediable by indictment. (z) And all injuries to a highway such as digging a ditch or making a hedge across it, laying timber upon it, or doing any act whereby it is rendered less commodious to the public, are nuisances at common law. (a) Although an Act of Parliament authorizes alterations or blocking up of a highway, yet if these are not carried out with reasonable care and cause unnecessary danger to persons using the highway, the person carrying out such alterations, etc., may be indicted for obstruction. (b)

Eavesdropping. Another instance of common nuisance is eavesdropping, which consists of loitering under walls or eaves of a house, to hearken after discourse and thereupon to frame slanderous and mischievous tales. Offenders are apparently indictable at the sessions, and liable to be fined and bound over to good behaviour. (c)

Conspiracy.

Conspiracy

By the common law, liberty of a man's mind and will, how he should bestow himself and his means, his talents and his industry, is as much the subject of the law's protection as is that of his body. Therefore, if two or more persons agreed to co-operate against that liberty of thought and freedom of will, they would be guilty of a conspiracy. (d)

A conspiracy is an agreement between two or more persons:—

1. Falsely to charge another with a crime either from a malicious or vindictive motive or feeling towards the party, or for the purpose of extorting money from him.

This does not extend to the case where persons consult and agree to prosecute a person who is guilty, or against whom there are reasonable grounds of suspicion. (c)

2. Wrongfully to injure or prejudice a third person or any body of men in any other manner.

Such as that to injure a man in his trade or profession, (f) or

(z) *Hart v. Basset*, T. Jon. 156; *R. v. Cross*, 3 Camp. 224; *R. v. Russell*, 6 East 427.

(a) 1 Hawk. P. C. c. 76, s. 48.

(b) *R. v. Burt*, 11 Cox 399; and see *Lewis v. Vaughan*, 4 Ti. Rep. 649; *Barber v. Penley*, 1893, 2 Ch. 449. See *Ogston v. Aberdeen Co.*, 75 L. S. 633.

(c) 4 Bl. Com. 168. S., common law.

(d) *Per Bramwell, B., R. v. Druitt*, 10 Cox C. C. 592; see *Mogul Steamship v. Macgregor*, 1892, A. C. 25. In S. this is an offence at common law. In this last-mentioned case the L. C. said, "I should

have thought it beyond doubt or question that a combination to insult and annoy a person would be an indictable misdemeanour." For instance, to cause an offence to be committed and circulate a rumour that the plaintiff was guilty of it and make this the basis of the annoyance.

(e) *R. v. Best*, 1 Salk. 174; see *Ex parte Wolf*, 28 J. P. 23; and also the cases cited, ante, p. 48.

(f) *R. v. Eccles*, 1 Leach 274; *R. v. De Kromme*, 56 J. P. 682; *Brown v. Murray* 1 R. 776.

to charge a man as the reputed father of a bastard; (*g*) but not to commit a mere civil trespass. (*h*)

3. To commit any offence. (*i*)

This would apply to the case of officers conspiring with others (not or not then officers) (*k*) to do that which would be illegal in themselves such as "shadowing" and watching premises; (*l*) and also to perpetrate outrages—as appears to have been done in Ireland, and perhaps in this country also. This latter would constitute in the officer concerned misprision of felony, which consists in knowledge that a felony has been committed and concealment of the fact. (*m*)

4. To do any act with intent to pervert the course of justice.

Such as that of justices to certify that a highway was in repair when they knew it was otherwise, (*n*) and that of procuring persons to commit offences, or to spread rumours that offences are about to be committed, with a view to create general alarm, and in order to obtain rewards (*o*) for the discovery of offenders or supposed offenders. (*p*)

5. To effect a legal purpose with a corrupt intent or by improper means. (*q*)

Nothing need be done in pursuance of the conspiracy, (*r*) and the indictment need not state the overt acts used to effect the intended mischief. (*s*) The word "falsely" need not be used in the indictment, nor the particular charge be specified, nor need it to be laid that the party charged was acquitted. (*t*)

A defence attempting to justify one of the overt acts is bad. (*u*)

(*g*) 1 Hawk. c. 72, s. 2.

(*h*) *R. v. Turner*, 13 East 228. But see *R. v. Kenrick*, 5 Q. B. 49.

(*i*) See *Lewis v. Vaughan*, 4 Ti. Rep. 649; *R. v. Pollman*, 2 Camp. 229; and *R. v. Meiklejohn*, Times 25. 10. 77.

(*k*) These other persons are usually "common informers." History from 28 Ed. I. downwards shows us that this phrase is frequently not easily distinguishable from "false witness." The chief business of informers in all times is to keep the sovereign and his ministers in a state of alarm. The Emperor Trajan knew this 1800 years ago and knew also how to deal with it.

(*l*) And cf. 38 & 39 Vict. c. 86, s. 7; 6 Ed. VII. c. 47, s. 2. These enactments would be relevant in the event of disputes between officers and their employers as to the terms of their employment. See *Smith v. Thompson*, 54 J. P. 596.

(*m*) An instance of this occurred some years ago where one of a number of police

killed a man outside the limits of a riot, but failed to be identified by his comrades.

(*n*) *R. v. Mawbey*, 6 T. R. 619.

(*o*) Such rumours have, it is said, been found coincident with police demands for increase of pay and promotion. It is also said that anarchism and the like are to some extent inventions for extracting money from the treasury. On some such grounds government rewards were many years since abolished. Special allowances under particular statutes have a similar tendency.

(*p*) *R. v. Macdaniel*, 1 Leach, 45; Fost. 130; *R. v. Jolliffe*, 4 T. R. 215; *R. v. Thompson*, 16 Q. B. 832; and see *R. v. Taylor*, 15 Cox C. C. 265; *R. v. Tibbits*, 1902, 1 K. B. 77.

(*q*) See *R. v. Parnell*, 14 Cox 508.

(*r*) *R. v. Best*, *ubi sup.*

(*s*) *R. v. Eccles*, *ubi sup.*; *R. v. Kinnersley*, 1 Stra. 193.

(*t*) *R. v. Spragg*, 2 Burr. 993.

(*u*) *Gregory v. Brunswick*, 6 M. & G. 205.

It is not necessary to prove any direct or immediate injury, or even to show any specific overt act. (x) The fact of conspiring need not be directly proved, but may be collected from other circumstances. (y) Individuals doing individual acts, but with a combined end previously determined on, is evidence of a conspiracy. (z)

*Extortion.**Extortion*

This offence, which is punishable by fine and imprisonment, consists in the taking of money by any officer by colour of his office, either where none is due at all, or not so much as is due, or where it is not yet due. (a) A threat to accuse a man of a crime with intent to extort money is a felony. (b) The threat may be made personally or to a third person with intent that it should be communicated. (c) It must be a threat to accuse or an accusation. If A be in custody for an offence, and the defendant threaten to procure witnesses to prove the charge, it is not sufficient, (d) but it need not be a threat to accuse before a judicial tribunal. (e) And it is immaterial whether the prosecutor be innocent or guilty of the offence imputed, (f) if the object be to extort money by means of the accusation. (g)

With regard to the sheriff, he is not liable for the act of his officer in this case. (h) The under-sheriff is, however, personally liable to this process if he refuse to execute until he has received his fees. (i) It is extortion to arrest a man in order to obtain a release for him, (k) or to obtain money from a prisoner by any colourable means; (l) and so also was it held to be where a collector of duty obtained a sum of money from a person on the allegation, contrary to the fact, that it was due. And in the same case it was held that the mere fact of the officer having paid the money over to his principal made it none the less extortion. (m)

Where an officer of the local authority under the Public Health Act was paid extra for work not included in his original

(x) *R. v. Robinson*, 1 Leach 37.

(y) *R. v. Parsons*, Black, 392.

(z) *R. v. Cope*, Stra. 144. The employment by the police of decoys—usually women of bad character—or of marked money, where the cause or suspicion is not reasonable would amount to a conspiracy.

(a) 1 Hawk. P. C. 418, s. 1; 3 Ed. I. c. 26. In S. if the officer take any sum from the defendant or purchase the goods the subject of the levy, he is liable to deprivation—Reg. 1772.

(b) 24 & 25 Vict. c. 96, s. 1.

(c) *R. v. Paddle*, R. & R. 484.

(d) *R. v. Gill*, 1 Arch. Cr. Pl. 22 ed. 505.

(e) *R. v. Robinson*, 2 M. & Rob. 14.

(f) *R. v. Gardner*, 1 C. & P. 479.

(g) *R. v. Richards*, 11 Cox 43.

(h) *Per Ashurst, J.*; *Woodgate v. Knatchbull*, 2 T. R. 154; and see *Bagge v. Whitehead*, ante, p. 645.

(i) *Hescott*, 1 Salk. 330. I., 27 & 28 Vict. c. 99, ss. 17, 18.

(k) *Williams v. Lyons*, 8 Mod. 189.

(l) *R. v. Colvin*, ib. 226.

(m) *R. v. Higgins*, 4 C. & P. 247.

agreement, it was held he was not liable for penalties as for extortion. (*n*) But the remedy is available as against tax collectors and overseers. (*o*)

On an indictment it is not necessary to prove that the defendant took the exact sum laid. It is for the jury to say whether the excesses were really taken as a fair charge or not. (*p*)

There can be no accessories in this offence. (*q*)

False Imprisonment

False imprisonment.

False imprisonment is a misdemeanour at common law.

Every restraint of the liberty of a free man is an imprisonment, (*r*) though it be in the high street or elsewhere, and he be not put into any prison or house; (*s*) but merely preventing a man from proceeding along a particular way is not, (*t*) nor if the person escape before actual arrest. (*u*)

The officer need not to complete the arrest actually touch the person. If the door of the room in which he is be locked it is sufficient. (*x*) Where a warrant has been shown to a party who goes at the desire of the officer without compulsion, it is an imprisonment. (*y*) Where a prisoner in custody for a civil offence escapes, if the escape be negligent, the officer may retake him at any time without warrant; (*z*) if voluntary, or the offender be a criminal prisoner, he cannot afterwards be retaken without a new warrant, unless the offence be one for which he might have been arrested originally without warrant, (*a*) or it be on fresh pursuit. (*b*)

If a prosecutor fail in proving an imprisonment, he may still prove an assault and battery. (*c*)

Inciting to Commit an Offence

Inciting to commit offence.

This is indictable at common law. (*d*)

The offence of soliciting and inciting a man to commit a felony, is, where no such felony is actually committed, a misdemeanour only. Where the felony is committed, it is a felony. (*e*)

(*n*) *Edwards v. Salmon*, 23 Q. B. D. 531. 301.

(*o*) See *ante*, pp. 654, 672.

(*p*) *R. v. Gillham*, 6 T. R. 265.

(*q*) *R. v. Loggen*, 1 Str. 73.

(*r*) 2 Inst. 482.

(*s*) *Fitz. Bar.* 501. As to the practices of "shadowing" and watching premises, see *ante*, p. 674, nn.

(*t*) *Bird v. Jones*, 7 Q. B. 742.

(*u*) *Russen v. Lucas*, 1 C. & P. 153.

(*x*) *Williams v. Jones*, Ca. temp. Hard.

(*y*) *Chinn v. Morris*, 2 C. & P. 361; *Pocock v. Moore*, Ry. & M. 321.

(*z*) *Dalt.* 169.

(*a*) 2 Hawk, P. C. c. 14, s. 9.

(*b*) *Ib.* c. 19, s. 12.

(*c*) See *ante*, p. 698. In S. this is an offence by 1701, c. 6.

(*d*) Same in S.

(*e*) *R. v. Gregory*, L. R. 1 C. C. R. 77; 24 & 25 Vict. c. 94, s. 2.

To solicit a servant to steal his master's goods is a misdemeanour, though it be not charged in the indictment that the servant stole the goods, nor that any other act was done than the soliciting and inciting. Such offence is indictable at the sessions, having a tendency to a breach of the peace; (*f*) and it is no defence that the servant purposely submitted himself to the incitement with intent to betray the inciter. (*g*) An attempt to suborn a man to commit perjury is a misdemeanour, (*h*) and so is the mere attempt to solicit a person to attempt to commit an offence, (*i*) or to pervert the course of justice by withholding evidence.

Where a defendant is indicted for a misdemeanour committed by the soliciting another to do an act which if done would amount to a felony and render the defendant also guilty of felony, it is unnecessary to negative the doing of the act, for it cannot be intended that a felony has been committed where none is charged. (*k*)

Where a person uses words or behaviour of or in the presence of another which are calculated to provoke a breach of the peace, he may be summoned before a justice and bound over to keep the peace for a certain time. (*l*) But this has been held not to apply to the case of a man going about using insulting words to another. (*m*) There must apparently be fear of corporal injury. (*n*)

Where officers incite persons to commit crimes it would probably amount to conspiracy. (*o*) The incitement which is here chiefly alluded to is that of provoking persons to offend against the law that the powers of the law may with some colour be employed against them.

The attempt to force a government reporter into a public meeting would appear to savour of this offence, and so also would the proceedings of officials—usually excise or police—

(*f*) *R. v. Higgins*, 2 East 5. The practice of "shadowing" must have a similar tendency, and would therefore appear to fall into this category; as also would that of employing powers not *bonâ fide* but simply *in terrorem*, on account of some motive other than the extortion of money.

(*g*) *R. v. Quail*, 4 F. & F. 1076.

(*h*) Referred to in *R. v. Schofield*, Cald. 397.

(*i*) *R. v. Rangford*, 13 Cox C. C. 9.

(*k*) 1 Stark. Cr. Pl. 148.

(*l*) Steph. Comm., 8th ed., 288, vol. iv.;

Macdonald, 1 Wh. 315.

(*m*) *Phillips v. JJ. of Gateshead*, L. T. (N.) 19-7-79. In the Met. Pol. Dist. such conduct is subject to a fine, and in default imprisonment: 2 & 3 Vict. c. 47, s. 54, *ante*, p. 408. Cases have occurred of assaults on the police as the result of such conduct on their part.

(*n*) 1 Hawk. c. 60, ss. 6, 7; Dalt. c. 116.

(*o*) See *ante*, p. 700. Disturbances and even riots have, it is said, been at times fomented by the police. This would constitute misdemeanour or felony on the part of the officers, as the case might be.

employed to procure convictions where the cause of suspicion is not reasonable.

Perjury

Perjury.

Perjury consists in the wilful taking a false oath before a Court or person having competent jurisdiction to administer it in reference to a matter then pending in a judicial proceeding, and on a point material to the issue. (*p*)

This and the taking a false oath in a matter not of a judicial nature or where not material are both common law misdemeanours. (*q*)

A false affirmation is punishable in like manner. (*r*)

The necessary points to establish are:—

1. The false oath must be taken deliberately and intentionally. (*s*)

2. It must be either false in fact, and the defendant swears that he *believes* it to be true: (*t*) or true, and he swears to it when he did not know it to be so. (*u*)

3. The oath must have been taken before a Court or officer having competent jurisdiction to administer it. (*x*)

4. It must be made in reference to a material part of the matter then under consideration. (*y*)

Two or more cannot be jointly indicted for this offence. (*z*)

Some one or more of the assignments must be proved by two witnesses, or by one witness, corroborated by proof of other material and relevant facts, (*a*) except where the perjury consists in the defendant having contradicted what he swore on a former occasion, in which case one witness to the defendant's original statement will suffice. (*b*)

Fabrication of evidence when it consists of the procurement of false witnesses is subornation of perjury, and if the party tampered with does not actually take an oath, the person inciting him to do so is still liable to punishment. (*c*) Fabrication in cases other than witnesses is a misdemeanour at common law. (*d*)

(*p*) See 2 Geo. II. c. 25, s. 2. The law in S. appears to be the same.

(*q*) *R. v. Chapman*, 2 C. & K. 846; *R. v. Hadfield*, 55 L. T. 783.

(*r*) 3 & 4 Will. IV. c. 49.

(*s*) 1 Hawk. c. 69, s. 2.

(*t*) *R. v. Pelley*, 1 Leach 327.

(*u*) 1 Hawk. c. 69, s. 6.

(*x*) 3 Co. Inst. 166; 1 Hawk. c. 69, ss. 3, 4; and see *R. v. Aylett*, 1 T. R. 69, and *R. v. Hughes*, 4 Q. B. D. 614.

(*y*) *R. v. Grieppe*, 1 Ld. Ray. 256; *R. v. Nichol*, 1 B. & Ad. 21.

(*z*) *R. v. Phillips*, 2 Str. 921.

(*a*) *R. v. Boulter*, 3 C. & K. 236; *R. v. Shaw*, L. & C. 579.

(*b*) *R. v. Knill*, 5 B. & Ald. 929, n.

(*c*) Hawk. P. C. l. c. 69, s. 2; *Baillie*, 1 S. 368.

(*d*) *R. v. Vreones*, 1891, 1 Q. B. 360. See Crim. Code Com. Report, p. 21.

Swearing up to a point (which does not exist) in a charge, essential to its establishment, would appear to savour both of fabrication and perjury; as for instance, swearing to facts which are applicable to some person other than the defendant.

Subornation of perjury is punishable as perjury. (e)

*Trespass to
Reality.*

Trespass to Realty

Trespass to realty is an offence under the criminal law only in the case of forcible entry.

There is no doubt an indictment will lie at common law for a forcible entry, although it is generally brought on the Act of Parliament. (f) In this case there must be proof of such a force as constitutes a public breach of the peace. (g)

An entry by breaking the doors or windows whether any person be in the house or not, especially if it be a dwelling-house, or where personal violence is done to the prosecutor or any of his family or servants or caretakers, or when it is accompanied with such threats of personal violence that it is calculated to prevent the prosecutor from defending his possession, has been held within the statute. (h) A mere trespass is not sufficient. There must be some show of force calculated to prevent resistance. (i)

Where the party has no right of entry, all persons in his company, as well those who do not use violence as those who do are equally guilty; but if he have a right of entry, then only those who use or threaten violence or actually abet those who do, are guilty. (k) And where the defendants broke and entered the plaintiff's house to prevent him murdering his wife, they were held justified. (l)

(e) Arch., 19th ed., p. 887.

(f) *Per* Wilmot, J.; *R. v. Blake*, 3 Burr. 1731; 5 Ric. II. c. 8; 8 Hen. VI. c. 9; 21 Jac. I. c. 15. In S. this appears to be an offence at common law. See also 29 Geo. III. c. 46.

(g) *R. v. Wilson*, 8 T. R. 357.

(h) 1 Hawk. c. 64, ss. 20, 21, 26, 27.

(i) *R. v. Smyth*, 5 C. & P. 201. The statement that has been made in more than one case that evidence has been obtained through the agency of a burglary is suggestive.

(k) 3 Bac. Abr. Forc. Ent. (B).

(l) *Hancock v. Baker*, 2 B. & P. 260.

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